

STATEWIDE STANDARDIZED TESTING PROGRAM OF THE DEPARTMENT OF EDUCATION

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FOREWORD

This report was prepared in response to House Resolution No. 335, Requesting a Study of the Statewide Standardized Testing Program of the Department of Education, which was adopted during the Regular Session of 1985.

The statewide standardized testing program of the department of education has three components: the Stanford Achievement Test, the Competency-Based Measures tests, and the Hawaii State Test of Essential Competencies. Each component has evolved in response to varying directives from the Legislature, the Board of Education, and the Superintendent of Education and to varying expectations of the public.

There is general agreement, among these groups, that testing is an important function of the department of education. There is little agreement, however, as to whether the current tests are valid and reliable measures of either an individual student's achievements and aptitudes or the school system's effectiveness. The issue of the testing program's effectiveness has been the subject of two previous evaluations done at the request of the Board of Education.

This study considers how well Hawaii's testing program provides decision makers with the kinds of information they need, and whether the information is provided in a timely manner and in an economically efficient way.

After presenting an overview of competency-based education and achievement testing, the report describes Hawaii's statewide standardized testing program and presents the results of a survey of the opinions of educators about the tests. The report concludes with findings and recommendations based upon the information gathered.

The Bureau acknowledges with appreciation the cooperation of the Superintendent of Education and the contribution of summer legal intern Karl-Reinhard Titczk who researched the memorandum attached as Appendix B.

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Chapter 1

INTRODUCTION

PART I. COMPETENCY-BASED EDUCATIONAL PROGRAMS

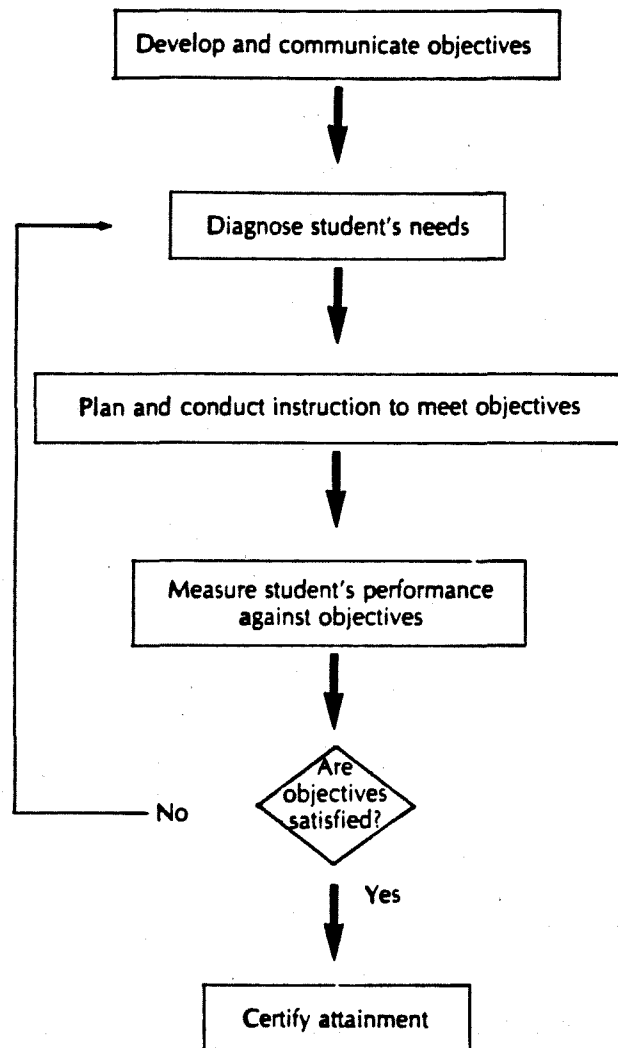
There is no one theoretical or operational definition that encompasses the range of present educational programs called "competency based." Indeed, with few exceptions, secondary schools have not used the competency-based concept to rethink their goals, to reorganize their curriculum, to restudy their credit requirements, or to realign their evaluation systems on a performance-based model. Those schools practicing competency-based education, though, base their programs on a five-step, student-oriented, instructional model. (See figure 1)

First, the specific objectives and learning requirements are explicitly defined at the outset of instruction. Second, some form of diagnostic pre-test is conducted to determine how well students are prepared, what specific learning needs they have, and what instructional methods are best suited to meet those needs. Third, students receive planned instruction. Fourth, students' performance is measured against the initial outcome objectives. And, finally, if the outcome goals are reached or surpassed, some form of acknowledgement or certification is presented to the student. If the objective is not obtained, the process reverts to step two: learning problems are diagnosed and instructional methods are evaluated, redesigned if necessary, and reemployed. This process continues until the student achieves the designated level of competency and is certified.

Some states use the test only for diagnostic purposes -- to uncover weaknesses in the curriculum and to measure the students' mastery of designated skills -- so that appropriate remedial work can take place. Others make satisfactory performance on minimum competency tests a prerequisite for receiving a high school diploma.

FIGURE 1

COMPETENCY-BASED INSTRUCTIONAL MODEL



INTRODUCTION

PART II. MINIMUM COMPETENCY TESTING

Minimum competency testing, however, differs markedly from competency-based education. Thirty-six states have legislated, or are in the process of legislating, minimal standards for achievement in basic skills as the goal for the first twelve years of schooling. The primary purpose of these programs is to certify that students who have completed them are able to demonstrate mastery of a specified set of performance requirements (competencies) established as a prerequisite to high school graduation.

Minimum competency testing is an effort to place greater emphasis on the basic skills, so as to "guarantee" that the high school diploma will mean that certain minimal level skills and facts have been mastered. It is characterized by the use of standardized tests of achievement and reflects the notion that general standards for schools, across all teachers, grades, subjects, and students, should be set. Most of these programs have been adopted within the past five years as a response to declining test scores, inadequate vocational preparation, and perceived shortcomings in high school programs generally. That is, the essential thrust of the minimum competency testing movement has been to use the testing as a quality control device in response to public demands for accountability.

Some issues are common to both minimum competency testing and competency-based education. For example, both need resources and expertise to meet assessment requirements and mechanisms to act upon assessment information, although even here differences are obvious.

Other issues, however, take considerably different forms in the two different contexts. The question of how adequately instructional programs can achieve desired outcomes, for example, simply poses different issues for competency-based education and graduation programs. So also does the legal basis for withholding a diploma from students unable to demonstrate competencies required for high school graduation. (See Appendix B)

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PART III. NORM-REFERENCED TESTS

Competency-based measures contain objectives for each question. Items are included based on the importance of the skill tested, and each correct answer represents at least partial mastery of that particular objective. These tests are referred to as criterion-referenced tests. By contrast, the Stanford Achievement Test (SAT) is a norm-referenced test; it is designed to discriminate between students rather than to document that a student has mastered a specific skill. Questions that all students know tend to be discarded because they do not differentiate between students. Norm-referenced tests are intended to provide reliable measures of student achievement comparable from subject to subject and grade to grade.

Chapter 2

HAWAII'S STATEWIDE STANDARDIZED TESTING PROGRAM

PART I. THE LEGAL SETTING OF HAWAII'S TESTING PROGRAM

The responsibility for public education in Hawaii is currently shared by the legislature, the executive, and the department of education through the board of education. Each derives its authority from the State Constitution. Article X, section 1, provides the constitutional foundation for the public school system. Section 2 of the same article establishes a state board of education, and section 3 empowers the board "...in accordance with law, to formulate policy, and to exercise control over the public school system through its executive officer, the superintendent of education...." The sole statutory reference to a statewide standardized testing program is in section 296-11, Hawaii Revised Statutes, which states in pertinent part:¹

The superintendent shall annually report to the governor on:

- (1) The number and percentage of students in public schools who, based on the statewide testing program, are scoring in each of the lowest three stanines in basic skills. Such a breakdown shall include statewide, districtwide, and individual school totals, and the number and percentage of students according to grade levels; and
- (2) The actions being taken by the department to improve these students' achievement levels; and
- (3) The progress of the students in the lowest three stanines to ascertain if these students are improving on a yearly basis; and

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- (4) An analysis of the effectiveness of actions implemented to address the needs of these students.

The actual policies and regulations governing the statewide testing program are contained in the board approved Policies and Regulations, Department of Education, State of Hawaii, 1970.² The requirements for graduation, including "demonstrated mastery of essential competencies," are found in the Student Progress 4500 series (last amended in 1978); the specifications of the minimum testing program are found in the Research & Evaluation 2500 series (last amended in 1970).

The Test Development and Administration Section of the Planning and Evaluation Services Branch of the department is charged with the administration of all statewide tests. In addition, it is responsible for the selection, modification, and/or development of all new tests that are to be added to the State's minimum testing program. The Office of Instructional Services evaluates the curricula uses of the test results.

The statewide testing program is conducted in both the fall and spring of each school year. The tests are administered in all schools, usually by teachers and counselors, under the direction of the school testing coordinator. Except for those tests offered for high school credits, all tests are mandatory for all students with the exception of students who fall into one or more of three special education categories.³

PART II. THE HISTORICAL DEVELOPMENT OF HAWAII'S TESTING PROGRAM

1941 - 1946

In 1941, the report, Community Survey of Education in Hawaii Report of the Executive Director, completed by Elizabeth Collins, recommended that "an organized program of testing be maintained throughout the Territory, not for the purpose of 'pigeonholing' children but for the purpose of measuring their progress in their development of skills and for finding out what difficulties

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they are having. It is important that the tests and the testing be uniform for the entire Territory, and that there be a uniform system of recording scores."⁴ Despite this recommendation, standardized testing was generally left to the individual school except when all schools were tested as a phase of a survey program.

1946 - 1962

In 1946, the Draper-Hayden Report recommended the appointment of a "director of tests and measurement in the Division of Child Growth and Development," and the "establishment of a uniform testing program to obtain comparable data for all schools -- for purposes of guidance, placement, motivation, diagnosis, instruction and evaluation."⁵ When the uniform testing program was begun in 1946, scholastic ability testing was conducted in grades three and six only. Later, a basic skills test was added in grades six, eight, nine, and twelve. In the period 1946-1952, no uniform tests were used although standardized tests which varied by grade were given. In 1952, a required pattern of ability testing in grades three, five, and seven and achievement testing in grades four, six, and eight were begun, followed by the introduction of an educational-vocational aptitude test battery in grade nine. With the availability of National Defense Education Act, Title 20, funds in 1959, the testing program was expanded to include basic skills tests in mathematics and science in grade eight and a scholastic ability test, a reading test, and a listening test in grade ten.

1963 - 1969

Beginning with the 1963-1964 school year, the School and College Ability Test (SCAT), a measure of general scholastic aptitude, and the Sequential Tests of Educational Progress (STEP), a general measure of achievement in reading, mathematics, science, social studies, and writing were introduced into the statewide testing program. In 1965, legislative mandate extended the minimum statewide testing program to include grades eleven and twelve so as to obtain data on the quality of secondary school education, improve the curriculum, and assist student guidance and counseling. Total conversion to

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the SCAT-STEP test series in grades four through twelve was completed in the 1967-1968 school year.

In 1967, the Senate Education Committee of the Fourth Legislature adopted Senate Resolution No. 65, requesting the Board of Education "to review and analyze, in depth, the proper role of the minimum testing program of the Department of Education." In the subsequent evaluation of the statewide program, Dr. Merwin recommended that test information needs for grades one, two, and three be determined and that available tests with potential for meeting these needs be studied.⁶ After reviewing many tests, the revised Stanford Achievement Test 1964 by Harcourt, Brace and World, Inc., and the newly constructed Cooperative Primary Tests published by Educational Testing Service were tried out in the primary grades. Despite recommendations by the State Testing Program Advisory Committee and Merwin that the SAT be substituted for the SCAT-STEP, the testing program continued using the original SCAT-STEP adopted in 1963.

1970 - 1976

During the 1970s, in Hawaii, as well as in other states across the nation, a decline in elementary and secondary public school students' verbal, writing, and mathematical skills prompted public policy makers to require improvements in basic skill instruction and a mastery of basic skills prior to high school graduation. The Department of Education Policy on Group Testing adopted by the Board of Education in 1962 was amended in October, 1970, to read as follows:⁷

A statewide testing program shall be established to provide periodic and comparable data relative to each student's progress, to the objectives of the various programs offered, and whenever possible, in relation to national norms.

The testing programs shall include a sequence of ability, achievement, aptitude [sic], and other standardized tests to be administered at prescribed levels of student maturity and

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development to ascertain kinds and amounts of information, concepts, and behavioral objectives designed as learning goals of the department.

A format for summary reports on the testing program was developed by the department in response to Senate Resolution No. 190, of the Sixth Legislature, requesting more descriptive material about the tests and reports written in a style that could be understood by the general public. Summary reports of the minimum testing program have been done annually since 1967-68 and are reviewed by the State Testing Program Advisory Committee whose recommendations were transmitted through the Office of Instructional Services to the Superintendent for final disposition while the Testing Section was under the Office of Instructional Services. These reports summarize statistical data on student test scores and, until recently, speculated as to the decline in test averages since 1969.

In 1971, the department also published The Foundation Program for the Public Schools of Hawaii, a general statement of objectives for the public schools' academic, guidance and counseling, student affairs, and administrative and support services programs.⁸ This document is the basis for student performance expectations in grades three, six, eight, ten, and twelve, as well as the "essential competencies" portion of the current graduation requirements.

In 1973, the Legislative Auditor examined the department's management of curriculum and criticized the fragmented and uncoordinated assessment and curriculum improvement efforts of the department.⁹

Thereafter, another evaluation of the statewide testing program in Hawaii's public schools was conducted. This May, 1974, evaluation also recommended that the STEP and SCAT be replaced by a criterion-referenced test such as the SAT and criticized the delay in scoring and disseminating test results.¹⁰ The SAT (1973 edition) was finally adopted for statewide use in 1975 and was administered to grades four and six that fall. The new

program was fully implemented with the addition of grades eight and ten in 1976.

Presently, the SAT is used as the primary Department of Education (DOE) test instrument to evaluate the reading, vocabulary, language, spelling, and mathematics performances of students in grades two, three, six, eight, and ten. While the SAT is not designed to measure student performance in all of the major objective areas of the department's Foundation program, it does provide a comparison of basic skills performance of Hawaii's students with national SAT test results and individual states. Over the past few years, SAT test results of Hawaii's students have shown a slight, gradual improvement in reading and math; however, when Hawaii's test results are compared to national SAT scores, the percentage of Hawaii secondary students in the "below average" category is greater than the national norm.

1976 - 1980

The department began an investigation of competency-based education as a means to upgrading school curriculum in 1976. In 1978, responding in part to the critical remarks in the 1973 Legislative Auditor's report, the department adopted a curriculum improvement planning document entitled Framework for DOE Curriculum Improvement 1976-1981.¹¹ This five-year plan of action called for the development of testing and evaluation measurements of student performance at different grade levels, of student mastery of basic skills, and of student mastery of real-life skills prior to high school graduation. It also stressed teacher assistance in correcting identified basic skill deficiencies in students. The first competency-based measures test, designed around the Foundation program's objectives, was developed for the department by National Evaluation Systems for third graders. A version of the test was subsequently developed by the department's testing section for sixth graders, and plans currently exist to introduce competency-based tests in grades eight and ten as well.

Changes in high school graduation requirements were adopted pursuant to work by the Citizens' Advisory Committee on Basic Skills and Real-Life

Skills and a department Task Force. The Task Force had been initially created in 1975 to review existing graduation requirements and was reactivated in 1977 to develop policy changes which would integrate basic skill competencies as part of public high school graduation requirements. In the same year, Act 187 established the Citizens' Advisory Committee on Basic Skills and Real-Life Skills to advise the Legislature on levels of student proficiency necessary for graduation. A year later, the Advisory Committee submitted a report to the legislature which cited an over-emphasis by the department on testing development and not enough emphasis on improving student skills through curriculum development. These concerns were considered by the Task Force and in August, 1978, the Board of Education approved the Report of the Task Force on Graduation Requirements revisions along with grade level performance expectations developed to implement the department's Foundation program objectives drafted in 1971.¹²

In 1979, Senate Bill No. 714 proposed a statewide qualifying examination for students seeking high school certificates of graduation. The stated intent of the bill, reflecting the public's concern with the State's educational system, was "to better prepare young people as effective and productive citizens of Hawaii" and to "restore meaning to the high school diploma," to "ensure assistance to those students whose needs are greatest," and "to reestablish public confidence in the public schools." Although the bill did not pass, the Hawaii State Test of Essential Competencies (HSTEC) was developed to test a student's basic and real-life skills including reading and understanding classified ads, bus schedules, long distance telephone rates, utility bills, revenue and expenditure graphs, consumer advertisements, and employment application forms. The HSTEC was administered for the first time in the fall of 1978 to all tenth grade students and some ninth, eleventh, and twelfth grade students. Test results were as follows: 50.1 per cent of the ninth graders passed, 64.5 per cent of the tenth graders, 73.1 per cent of the eleventh graders, and 75.4 per cent of the twelfth graders. Although the contractors (Educational Testing Service) documented excellent item statistics for the original test, major flaws were discovered in test construction. There was some doubt that the test measured what it purported to measure and some doubt that the content of the test

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corresponded to the Foundation program objectives on which it was based. Technical revisions were made by the department's testing coordinator and content area revisions by the Office of Instructional Services before the test was administered statewide in 1983, and Northwest Regional Educational Laboratory developed a revised HSTEC in January, 1984.

During the 1979 interim, a House Education Subcommittee was directed to review the status of the department's efforts in basic skills instruction and testing. As a result of its review, the Subcommittee, in its report to the Tenth Legislature, recommended that in-service training for teachers and administrators in basic skills instruction and testing should be increased, and that the department should develop a detailed basic skills program impact statement providing information on the projected number and types of students expected to participate in the basic skills testing and instructional programs and the projected amount of resources necessary to fully implement such programs.¹³

1980 - Present

The Intensive Basic Skills program was initiated during the 1979-80 school year with an appropriation of \$250,000. A total of 1,751 students, grades eight and nine, representing the seven districts and thirty-nine secondary schools throughout the State received assistance in developing their basic and life skills. In 1980, the Legislature requested that the department report on the status of the program. This report to the 1981 legislature identified a projected target population of 12,000 made up of students identified as needing supplementary help in basic skills development but not receiving any such services from existing federal or state funded programs. The 1980-81 program, for which \$251,000 was appropriated, included the Course for Essential Competencies Certification and the Essential Competencies Certification Center. During 1981-82, these certification alternatives for demonstrating mastery of the essential competencies for graduation were made available to 4,932 students. Of this number, 2,945 students (59.7 per cent) were successfully certified. Beginning in 1983, all graduating seniors were required to pass the HSTEC or a certification alternative, and the

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superintendent of education was required to report annually to the governor on the progress of students in the statewide testing program. (See above)

The first competency-based measures test was also administered in 1981 after complaints by teachers postponed its release one year. In fact, the administration of the grade six competency-based measures test was recently canceled because of typographical errors and other problems similar to those that delayed the grade three test. The department hopes to correct the deficiencies in these two competency-based tests and to develop tests for eighth graders and tenth graders which will replace the HSTEC graduation test by 1990.

In 1983, Act 298 amended the duties of the superintendent of education to include annual reports to the governor on the statewide testing program test results. Commenting on the provision in House Standing Committee Report No. 303-83, the Education Committee suggested that such annual reports would provide "a more accurate measure of progress made in remediation activities" by the department. In House Standing Committee Report No. 563-83, the Finance Committee added that "achievement test scores and the subsequent analysis and recommendations will provide the legislature one measure by which the department of education can be held accountable." And in Senate Standing Committee Report No. 773-83, the Education Committee required that "the report include the progress of students in the lowest three stanines from year to year and an analysis of the effectiveness of actions implemented by the department of education to address the needs of these students."

The department submitted a detailed report to the 1984 legislature focussing on the first of the requirements of Act 298. State, district, and school scores were reported for grades four, six, eight, and ten in the 1982 testing program. Also, the department manually retrieved information on individual students in the lowest three stanines in 1980, and for 1982 determined where those students were and their scores. The report is vague and generalized, however, on the matter of the department's actions to

improve the achievement levels of the students in the lowest three stanines.

PART III. THE COSTS OF HAWAII'S TESTING PROGRAM

Test Development Costs

The Test Development and Administration Section of the Planning and Evaluation Services Branch of the department is responsible for the development of valid and reliable norm and criterion referenced tests for the statewide testing program. On occasion, the department has had test materials developed by outside contractors but with mixed results.

Table 1 is a list of tests being developed, modified, or made operational by the Testing Section.

Currently, the department is in the process of converting the statewide testing program from a largely achievement-test oriented program to a more balanced combination of achievement and competency testing. Accomplishing this change-over would entail considerable test development activity over the next four years with contractual costs estimated at \$63,000 per test. Other costs include administration, scoring, and servicing estimated at over \$25,000 per test. While the major portion of the development costs may be borne by federal funds, if available, additional funds will be necessary to administer these tests.

Test Administration Costs

The test administration responsibilities of the Testing Section include preparing estimates of the materials needed for each testing site; maintaining an annual inventory of answer sheets, test booklets, workbooks, manuals, and brochures; printing updates of all test instructions for distribution to all schools; distributing the inventory of test materials to approximately 500 testing sites; editing, collating, and sorting answer sheets in preparation for machine reading; distributing individual, class, and school reports of test

Table 1

TESTING PROGRAM FORMS AND STATUS

NAME OF TEST	NUMBER OF FORMS	GRADES TESTED	STATUS
Hawaii State Test of Essential Competencies	2	9-12	operational, parallel forms are administered in alternate years to ensure test security
Essential Competency Certification Center	1	10-12	operational, parallel performance items are administered in alternate years to ensure test security
Competency-Based Measure	2	3	operational, a second form is being developed and corrections are being made to the first form
Competency-Based Measure	2	6	under construction, 1984-85 pilot-test canceled due to complaints from schools regarding errors in test items
Competency-Based Measure	2	8	under construction, to be operational 1986-87
Competency-Based Measure	2	10	under construction, to be operational 1986-87
Credit by Examination	10	8-12	new tests being developed for administration in 1986-87

Source: Department of Education, Special Analytical Study, Test Development
and Administration, FY 1985-1987, p. 2.

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results; and providing technical assistance in test selection and test interpretation to schools and testing coordinators.

In fiscal year 1985-86, personnel costs for the Testing Section were \$82,293; in-service costs (excluding services on a fee basis) were \$92,570. Table 2 contrasts the number of tests administered with staff resources over the last ten years.

Table 2

ESTIMATES OF TESTING OFFICE WORKLOAD FOR PERIOD 1975-1986

YEAR	Number Tested	No. Documents Process. (est)	No. of Tests	No. of staff
1975	65,000	234,000	6	1 Testing Spec II (E06) GF 1 Clerk V GF
1977	65,000	234,000	6	1 Testing Spec II (E06) GF 1 Clerk V GF 5 Student Help GF
1978	89,000	260,000	7	1 Testing Spec II (E06)GF 1 Clerk V GF 5 Student Help GF
1979	104,000	276,000	9	1 Testing Spec III (E06) GF 1 Testing Spec I (E05) FED 1 Secretary II FED 1 Clerk V GF 5 Student Help
1980	106,000	280,000	17	(same as above)
1981	134,000	402,000	18	(same as above)
1982*	121,000	376,000	19	(same as above)
1983	135,000	410,000	20	(same as above)
1984	136,000	408,000	22	1 Testing Spec III GF 1 Testing Spec I FED 1 Secretary II 1 Clerk V 1 Clerk I
1985	136,000	408,000	22	(same as above)
1986	136,000	408,000	22	(same as above)

*In 1982, grade 2 SAT was not administered due to lack of funding.

GF = General Funds

FED = Federal Funds

Source: Department of Education, Special Analytical Study, Test Development and Administration, FY 1985-1987, p. 3.

Chapter 3

SURVEY OF TEACHERS AND COUNSELORS, PRINCIPALS, AND SCHOOL AND DISTRICT TESTING COORDINATORS

The statewide standardized testing program is accountable not only in terms of its administrative efficiency, but also in terms of its usefulness to the users of the program, i.e., teachers and counselors, principals, and school and district testing coordinators. Each group has different expectations of the program and interacts with it in different ways. In order to measure their perceptions of the testing program's effectiveness, a survey was conducted.

PART I. SURVEY PROCEDURES

Three questionnaires were designed: one for teachers and counselors of second graders, third graders, sixth graders, eighth graders, ninth graders, tenth graders, eleventh graders, and twelfth graders; one for school principals; and one for school and district testing coordinators.

Some questions were asked of more than one group, and some questions were asked of only one group. For example, questions regarding the amount of standardized testing in the schools and the benefits of standardized testing to students were asked of each group. Questions regarding the validity and reliability of the standardized test instruments were asked of teachers and counselors and of school and district testing coordinators. Questions regarding the need for full-time testing coordinators were asked of principals and of school and district testing coordinators. A variety of questions regarding other aspects of the testing program were asked of each group independently. A copy of each of the three questionnaires is included in Appendix C of this report.

Packets of questionnaires were sent to school principals with a cover letter from the Superintendent of Education requesting that the principal

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distribute them to their teachers and counselors and school testing coordinators. A letter of transmittal from the Superintendent of Education to survey respondents was attached to each questionnaire. In both the cover letter accompanying the packets and the letter of transmittal to survey respondents, the confidentiality of responses was assured. District testing coordinators received their questionnaires and the Superintendent's letter of transmittal directly from the Legislative Reference Bureau.

A total of 6,100 teachers and counselors, 226 school principals, and 232 school and district testing coordinators were surveyed. In some schools, a teacher or counselor or the school principal functions as the school testing coordinator. In those cases, the individual completed two forms of the questionnaire. The packets and the district testing coordinators' questionnaires were posted in mid-September.

Completed questionnaires were mailed directly to the Legislative Reference Bureau by the survey respondents. At no time were the individual responses available for inspection by the Department of Education. Questionnaires received on or before October 7th were included in the statistical sample; questionnaires received after October 7th were not.

Responses for each of the three groups were tabulated and summary statistics for each question were generated using The Crosstabs System.¹ Absolute frequency counts of responses to each question are presented in Appendix C and discussed in Part II of this chapter. Also, responses of teachers that reported not using test score results from the standardized testing program are contrasted with responses of teachers that reported using the results for placement, counseling, diagnosis, or evaluation.

PART II. SURVEY RESULTS

The margin of error for a survey of this size is four per cent. That is, there is a four per cent chance that the overall results differ from the results that would be obtained in a complete census of those to whom surveys were sent. Of the 6,100 questionnaires distributed to teachers and

SURVEY RESPONDENTS

counselors, 2,081 or 34 per cent were returned by the cutoff date; of the 226 questionnaires distributed to principals, 185 or 82 per cent were returned; and of the 232 questionnaires distributed to school and district testing coordinators, 134 or 58 per cent were returned.

While the contributors to the sample remained anonymous, the data may be biased for several reasons. Some people, when asked their opinion of the testing program, may exaggerate their criticisms out of malice or alienation. Others may understate their criticisms, especially if they fear retribution. It is possible that these two tendencies cancel each other out, but it is unlikely. One tendency may be far stronger than the other, and it is not possible to know which one. It is more important to remember that any questionnaire is only a sample of the possible questions and that the answers respondents give are no more than a sample of their attitudes and experiences on each question.

Teachers and Counselors

By a two to one margin, teachers believe that the statewide testing program is of benefit to students and that the results obtained give them a better understanding of their students' knowledge, abilities, aptitudes, and achievement. Although they are highly critical of the time it takes to administer the tests and return test results, they do not feel that there is too much standardized testing in our schools, and they are generally satisfied with the reports sent back to the schools.

Teachers report having had course work in tests and measurements and receiving sufficient help from their school testing coordinators in the interpretation and use of standardized test results. They are most confident of the validity and reliability of the SAT and least confident of the validity and reliability of the competency-based measures tests. Their opinions are nearly equally divided on the question of whether the Hawaii State Test of Essential Competencies is valid and reliable.

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Ninety per cent of teachers responding reported that they used test results for placement, counseling, diagnosis of students' learning problems, or evaluating teaching effectiveness. Of the ten per cent responding that they do not use test results, most commented unfavorably on the time it took to receive reports. These teachers pointed out that, by the time they receive test result reports, the students have moved on to another grade or another school. They also report that results are returned to the school's homeroom teachers, making it difficult for subject matter teachers to evaluate the test performance of their students.

All teachers indicated that they would like more consultative help from the department and their district testing coordinators, and that they would attend workshops or in-service programs on the practical application and interpretation of test results. A sizable number of those commenting on this last point suggested that some form of compensation (release time, college credit) would be appropriate if attendance at these workshops was mandatory.

Principals

Principals also feel that the standardized testing program is beneficial to the students. Like the teachers, they do not feel that there is too much testing in the schools although they express concern that their building's testing coordinator does not have the needed time or experience to do an effective job. Principals apparently feel that the average classroom teacher is not sufficiently trained to use or interpret standardized test results, yet they do not believe that each school needs a full-time testing coordinator.

Most report not having a committee to evaluate the standardized testing program in their school and, by a narrow margin, believe that they should.

School and District Testing Coordinators

Testing coordinators overwhelmingly believe that the standardized testing program is beneficial to students. They agree with teachers that the use of the results of the standardized tests justifies the retention and administration

SURVEY RESPONDENTS

of these tests. And, like the teachers, they express confidence in the reliability and validity of the SAT but not the competency-based measures tests or the Hawaii State Test of Essential Competencies.

The coordinators report that they provide test information bulletins, workshops, in-service training programs, and grade level meetings with teachers after the return of each set of standardized test results. They report that the preparation time for these duties varies throughout the school year with peaks during actual testing periods. They favor additional preparation time but not full-time testing coordinators for each school. Like the principals, the coordinators believe that teachers need additional help in using and interpreting test results.

Chapter 4

FINDINGS AND RECOMMENDATIONS

PART I. REGARDING THE MANAGEMENT OF HAWAII'S TESTING PROGRAM

The position of the testing program within the organizational structure of the department reflects neither the scope nor the importance of its current functions. Hawaii's testing program is one of four sections within the planning and evaluation branch under the office of the superintendent. It is responsible not only for providing data to districts, schools, teachers, parents, and students on student performance levels, but also for providing technical assistance to staff and line offices on the interpretation of scores obtained from the standardized tests, serving as liaison to federal and state agencies involved with test development and testing activities, helping the department target curriculum areas that need improvement, and, indirectly, providing the board of education and the legislature some measure of the educational system's effectiveness. In other words, the testing section (two professionals, one secretary, and two clerks) appears to be performing branch-level functions with the administrative authority of a relatively small line agency.

Changes in the functions of the testing program have not been reflected in changes in the size of its staff, its facilities, or its resources. Ten years ago, the number of tests administered was approximately one-quarter what it is today; the number of students served was approximately one-half the present number. Yet the testing section is located in the same building that housed it in 1976 when there were fewer tests being administered and no tests being developed. Test materials are currently stored at two other sites because the testing office does not have adequate storage space. The auxiliary services branch provides delivery and pick-up service for the testing section on a space/driver/truck available basis, but schools continue to complain of delays in receiving testing materials. Moreover, an audit of

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the testing program in 1974 by Dr. Lehmann pointed out that, even at that time, the testing section was seriously understaffed for the functions it was performing: "It is truly unfortunate that the total responsibility for ordering the tests, developing the program, preparing interpretive aids, providing for consultative help, conducting workshops and in-service programs, shepherding the results through the computer and a host of other details are delegated to a single professional person. The only assistance that the staff specialist in testing has is a part-time secretary, test scoring clerk and some part-time student help. The writer is truly amazed that the statewide testing program is operating so well considering the constraints imposed on it."¹ An indication of the extent to which staffing has not kept pace with workload can be seen in Table 2, page 16. During the period 1975-79, there were six tests administered and maintained by the testing section. In 1983-84, there was a total of twenty-two tests all carrying the highest priority.

The time required to keep pace with the expansion in the number of tests offered has diminished the time that has been devoted to assuring lateral coordination with other branches and sections of the department. Also weakening the management function are the confused roles and responsibilities regarding program implementation by the office of instructional services, the data processing services branch, the planning and evaluation branch, the student information services branch, the testing section, the district offices, and the schools.

It is recommended that the department:

- (1) Limit the number of tests with the highest priority to a number appropriate to the staffing level;
- (2) Prioritize the functions necessary to implement the testing program;
- (3) Consolidate the materials used by the testing section in one location;

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- (4) Institute a regular schedule of pick-ups and deliveries of testing materials; and
- (5) Clarify the lines of authority among the programs related to testing by specifying the kinds of decisions which may be made at each level.

PART II. REGARDING THE PLANNING FOR HAWAII'S TESTING PROGRAM

As the legislature and the board of education have specified educational goals and the department has strived to attain them, planning at both the state level and the program level has been neglected.

This was noted in the 1974 Management Audit of the Department of Education and earlier by the department itself when the 1967 superintendent of education called for an integrated and coordinated approach to organizing the department. In doing so, he noted that over the past twenty years:²

The DOE, instead of complete reorganization, attempted a patchwork type of organization, and met the explosive growth by tacking on "more" and "more" of the same onto the existing structure and where this was not feasible, by simply "adding" -- but neglecting to revise and subtract from the existing structure and organization. This course of action has resulted in the lack of definition of goals, objectives and functions of various echelons of the DOE.

Superintendent Jackson's remarks apply equally well to the lack of a strategic plan for the development of Hawaii's testing program. As in the case of the department's drafting of a master plan, the testing program has had to respond to a series of recurrent attempts by the legislature, the board of education, and the superintendent of education to respond to the expectations of varying constituencies. This has led to a piecemeal development of the testing program in response to short-range considerations.

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The last decade or two has witnessed a succession of policy changes each of which has remained current for only a few years (see Chapter 2, Part II. The Historical Development of Hawaii's Testing Program). Minimum competency testing is the latest innovation designed to cause the schools to reform. In fact, the department contemplates merging the competency-based measures tests with a standardized achievement test this spring and replacing the Hawaii State Test of Essential Competencies with a competency-based measures test by 1990. Available evidence, however, provides little, if any, justification for the belief that minimal competency testing solves the problem of low academic achievement by students.³

It is recommended that the department:

- (1) Formulate the standards, objectives, activities, and evaluation measures of Hawaii's testing program;
- (2) Evaluate model testing programs in other jurisdictions; and
- (3) Adopt a long-range plan for Hawaii's testing program including, but not limited to, tests to be administered, tests to be developed, grades to be tested, funding requirements, staffing requirements, and organizational strategy.

PART III. REGARDING THE EFFECTIVENESS OF HAWAII'S TESTING PROGRAM

The push for state-by-state comparisons (prompted in part by the Commission on Excellence in Education's report two years ago, "A Nation at Risk: The Imperative for Educational Reform") has renewed national debate over the validity of the SAT and of standardized tests in general. Critics maintain that SAT scores are too easily influenced by preparation classes, that the test is poorly constructed, and that it is unfair to low-income or minority students. Supporters say that, historically, a certain score on the SAT is a good measure of a student's general academic ability.

Some states are making effective use of testing data on their own. For example, the New York Board of Regents has adopted regulations directing the state education department to report annually to each local school district and non-public school the results of their assessment reports. The reports, presented to each school board at public meetings, provide information on student performance levels and drop-out rates in schools and districts for the past three years. Each community then uses the information, with the state's assistance, to target areas that need improvement.

In Hawaii, test score results are sent by the Department of Education to each district office and each school in the state system; the Office of Instructional Services uses the reports to evaluate curricula strategies; and the Legislature is informed annually of the progress of students scoring in the lowest three stanines on tests of basic skills. Yet, these efforts are not coordinated by an established set of objectives for the statewide standardized testing program.⁴

Even the Board of Education's policy statement on statewide testing does not suggest whether the testing program is intended to uncover subject areas that need strengthening or to target schools that need added funding or to trigger remedial instruction for students who are not meeting minimum standards of competency. Instead, it states:⁵

A state-wide testing program shall be established to provide periodic and comparable data relative to each student's progress, to the objectives of the various programs offered, and whenever possible, in relation to national norms.

The testing program shall include a sequence of ability, achievement, aptitude [sic], and other standardized tests to be administered at prescribed levels of student maturity and development to ascertain the kinds and amounts of information, concepts, and behavioral objectives designed as learning goals of the department.

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As written, the board's policy does not specify to whom the data shall be provided nor for what purpose nor what levels of performance by Hawaii students in relation to national norms is to be preferred. Indeed, the second paragraph suggests that the testing program exists to determine the learning goals of the department. It is more commonly the case that goals are set in advance of testing and that tests are administered in order to establish if the objectives of a program have been met. In fact, it appears that the board has designed a system in which tests are administered for the sake of testing. It is little wonder, then, that the department simultaneously denies that there is a problem with standardized test scores while rationalizing the performance of Hawaii students;⁶ that the schools and districts conduct few in-depth analyses of patterns of test results; or that the Office of Instructional Services has yet to find it necessary to change the schools' curriculum based on test results.

The performance of Hawaii students on standardized tests has become the focus of controversy about the quality of education in public schools. (Hawaii's scores continue to be below the national average, although it was recently announced that SAT scores for Hawaii's class of 1985 averaged eight points better than the scores of last year's students.) Survey respondents expressed hostility to the publishing of test score results (SAT test results by school and grade are regularly reported in both daily newspapers) and charged that this promotes unhealthy comparisons among schools and unfounded criticisms of schools by parents and the general public. At the same time, of the testing coordinators and teachers responding to the Legislative Reference Bureau's survey, an overwhelming percentage of both groups believe the SAT to be valid and reliable.

The responses of the three groups to survey questions shed some light on this situation. Teachers and counselors, principals, and school and district testing coordinators all report that the statewide standardized testing program is of benefit to the students, yet each group also cites problems with the tests which affect test score results.

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Among the specific points they make are the following:

1. Teachers are "teaching the test" thereby rendering test score results suspect.
2. Administrators are emphasizing high test scores at the cost of better teaching.
3. Students are cheating or not really trying to pass the tests because they have not had the significance of the test score results explained to them.

None of the groups feels that there is too much testing in the schools, yet teachers complain that test score results are returned after students have moved on to another grade or, possibly, another school; principals assert that their building's testing coordinator needs more time to do an effective job; and testing coordinators (who are usually counselors) say they are given no preparation periods for this extra duty.

Clearly, there is support among these educators for some form of standardized testing. At the same time, they are pointing out that the current program is deficient in a number of significant ways. Indeed, their need for timely results from valid and reliable tests is arguably the most important function of the testing program.

Once having received accurate and timely test results, it is obviously important that teachers be able to use and interpret the scores. Teachers report having had course work in tests and measurements, yet principals do not feel that the average classroom teacher is sufficiently trained to use or interpret test results.

By the same token, school testing coordinators report that they provide test information bulletins, workshops, in-service training programs, and grade level meetings with teachers after the return of each set of

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standardized test results, but teachers do not feel that they are getting sufficient help from the department or the district testing coordinators.

Unfortunately, it is not clear from the survey responses whether principals are mistaken as to the ability of teachers to use and interpret test results or whether the pre-service instruction that teachers receive in tests and measurements is insufficient or whether the ability of district testing coordinators and the department to provide supplementary assistance to teachers is limited by the demands of their responsibilities in other areas.

The questions were raised in a previous evaluation of the statewide standardized testing program.⁷ The conclusion, at that time, was that teachers would benefit from required attendance at workshops and in-service programs which explain how to interpret and use test results, and that there was a clear need for having the district testing coordinator be a full-time position in testing. Neither recommendation was implemented by the department, and the problems persist.

Many of the findings of the Lehmann evaluation and the earlier Merwin evaluation are duplicated by the present study. (A comparison of the raw scores on selected questions from the three studies is included in Appendix D.) What is notable is the persistence over a twenty-year period of problems regarding the timely return of test score results, the ability of teachers to use and interpret results, the number of responsibilities competing with testing duties for the attention of district testing coordinators, and the lack of a defined purpose for the testing program as a whole.

This lack of purpose is what has confounded previous attempts by the department and the legislature to assess its effectiveness. In 1974, Dr. Irvin Lehmann pointed out that, "Unfortunately, the majority of persons interviewed had no clear-cut perception of the purposes of the Statewide Testing Program." He recommended that, "A concerted effort must be made to educate teachers, counselors, administrators, and no doubt parents about the purposes of the Statewide Testing Program." Dr. Lehmann added that, "We feel that many of the misconceptions, antipathy, and at times, resentment and

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even hostility towards the statewide testing program are due, to a large extent, to the misunderstanding of what can and cannot be provided by the existing program."⁸

There is still no clear conception of the goals of the testing program. Thus, it remains difficult to establish whether or not the program is effective. If the program is supposed to help teachers diagnose the learning problems of their students, then the test score results should be returned while the students are in the same grade. If the program is intended to uncover weaknesses in the curriculum, then test score results should be analyzed by item and subject area and instructional methods redesigned as necessary. If the purpose of the testing program is to measure students' mastery of designated skills, then the results should be returned to school counselors and testing coordinators at a point during the school year when students still have time to make up deficiencies. If test results are to be used by state officials to evaluate how the schools are using public moneys, then the department should decide what levels of achievement are the standard for students at each grade level in the public school system and report individual school totals by grade level to the legislature. If the purpose of testing is to improve student achievement levels, then test taking preparation classes should be required.

Until the department and the board of education explicitly define the objectives of the statewide standardized testing program, it is not possible to measure its effectiveness. Nor is it possible to interpret test score results, generally, unless some agreement is reached on desired levels of student achievement. And, disputes over the shortcomings of school programs cannot be resolved using test score results until the department and the board rethink their position on the validity of currently used norm-referenced tests for Hawaii students.

It is recommended that the department:

- (1) Set specific operational objectives for the statewide testing program;

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- (2) Communicate the objectives of the testing program to teachers, counselors, principals, testing coordinators, students, parents, and the general public;
- (3) Allocate resources to meet these objectives at the school, district, and state level;
- (4) Consult teachers and counselors, principals, and school and district testing coordinators on the content and use of standardized test results; and
- (5) Follow-up revisions in the program with longitudinal studies of the performance levels of students.

Footnotes

Chapter 2

1. Hawaii Rev. Stat., sec. 296-11.
 2. Hawaii, Department of Education, Policies and Regulations (Hawaii: 1970), code nos. 4540, 4540.1, 2520, and 2520.1.
 3. (1) Those who are physically handicapped in such a way that the tests cannot be completed in the manner in which they are administered to other students and for which no reasonable accommodations can be made. (2) Those who are non-English speaking immigrants with less than one continuous year in Hawaii schools except when teacher's observations or scores on an appropriate language screening test indicate probable functionality at the student's grade level. (3) Those who have been identified within specific special education groups.
- Hawaii, Department of Education, Summary Report of Statewide Testing Program (Honolulu: 1985), p. 3.
4. Elizabeth M. Collins, Community Survey of Education in Hawaii, Report of the Executive Director (Honolulu: Pacific Herald Publishing Co., 1941), [p. 45].
 5. Edgar M. Draper and Alice H. Hayden, Hawaiian Schools, A Curriculum Survey, 1944-45 (Washington, D.C.: American Council on Education, 1946), pp. 148-49.
 6. Jack Merwin, Evaluation of Statewide Testing Program (Hawaii: Department of Education, 1967), cited in Hawaii, Department of Education, Evaluation of the Stanford Achievement Test in Hawaii Schools (Honolulu: 1969).
 7. Policies and Regulations, code no. 2520.
 8. Hawaii, Department of Education, The Foundation Program for the Public Schools of Hawaii (Honolulu: 1971).
 9. Hawaii, Legislative Auditor, Management Audit of the Department of Education (Honolulu: 1973), pp. 123-240.
 10. Irvin J. Lehmann, An Evaluation of the Statewide Testing Program in Hawaii's Public Schools (Hawaii: Department of Education, 1974), pp. 35-36, 38-39.
 11. Hawaii, Department of Education, Framework for DOE Curriculum Improvement 1976-1981 (Honolulu: 1978).
 12. Hawaii, Department of Education, Report of the Task Force on Graduation Requirements (Honolulu: 1978), pp. 14-17.
 13. House Education Special Committee Report No. 28 on House Resolution 844, Tenth Legislature, 1979, State of Hawaii, pp. 5-6.

Chapter 3

1. The Crosstabs System, Cambridge Computer Associates, Inc., a software program to generate social science statistics.

Chapter 4

1. Irvin J. Lehmann, An Evaluation of the Statewide Testing Program in Hawaii's Public Schools (Hawaii: Department of Education, 1974), pp. 17-18.
2. Statement attributed to Lowell Jackson, former superintendent of education, in "Plan for Reorganizing the Department of Education," November 1967, cited in Hawaii, Legislative Auditor, Management Audit of the Department of Education (Honolulu: 1973), p. 43.
3. Summarized from the following: Ralph A. Smith, Regaining Educational Leadership: Critical Essays on PBTE/CBTE, Behavioral Objectives, and Accountability (New York: Wiley, 1975); John I. Goodlad, "A Perspective on Accountability," Phi Delta Kappan, 57, No. 2; James W. Guthrie, "Social Science, Accountability, and the Political Economy of School Productivity," Indeterminacy in Education, ed. John E. McDermott (Berkeley: McCutchan, 1976); Phillippe C. Duchastel and Paul F. Merrill, "The Effects of Behavioral Objectives on Learning: Review of Empirical Studies," Review of Educational Research, Winter, 1973.
4. The Foundation Program Objectives established by the Department of Education serve as the basis for curriculum and instruction in the public schools. Because these objectives were stated in very general terms, "performance expectations" were developed to specify the competencies expected to be demonstrated by students at grades three, six, eight, ten, and twelve. The competency-based measures tests (CBMs) were then developed to measure how well students met the goals set by the department.

The tests have not been well received by teachers. There have been complaints by teachers that the tests contain errors, are too subjective, and are neither valid nor reliable measures of student competencies. These complaints carried over into the responses to the survey done by the Legislative Reference Bureau. When asked whether they felt that the CBM test is valid and reliable, 42 per cent of the teachers and 56 per cent of the testing coordinators replied "No." Most wrote in comments to the effect that they were grateful the department had suspended use of the tests and were hopeful that the tests would be dropped altogether.

The Foundation Program testing has had an indirect effect on the SAT testing. Since competency-based measures tests are given at the end of a grade (in order to allow the maximum amount of opportunity for the students to master the competencies before testing), it has become the department's practice to also administer the

SAT test at that time. This accounts for achievement test results being returned after students have moved on to another grade and renders the test useless for purposes of diagnosing learning problems or prescribing remedial work. There is nothing to prevent the SAT being administered in the fall; the Educational Testing Service provides results adjusted for its administration at five different points during a school year beginning October 8th.

5. Hawaii, Department of Education, Policies and Regulations (Hawaii: 1970), code no. 2520.
6. A department news release regarding 1985 SAT scores states that the test is inappropriate for the purpose of making comparisons of student performance among states. It adds that there are factors variously related to performance on the SAT including: academic courses studied in high school, family background, sex of student, education of parents, proportion of eligible students taking the test in a state, and ethnicity. A report of these characteristics on the basis of ethnic group will be released by The College Board later this year; reports of mean SAT scores by state, ethnic group, and percentage of SAT-takers are regularly released by the Board. In 1983, Hawaii's mean SAT scores ranked 46th in the nation; Hawaii ranked 20th when the scores were adjusted for per cent tested in each state.
7. Lehmann, pp. 30-33.
8. Ibid., pp. 23, 25.

HOUSE OF REPRESENTATIVES
THIRTEENTH LEGISLATURE, 1985
STATE OF HAWAII

H. R. NO.

335
H.D. 1

HOUSE RESOLUTION

REQUESTING A STUDY OF THE STATEWIDE STANDARDIZED TESTING PROGRAM
OF THE DEPARTMENT OF EDUCATION.

WHEREAS, the main purpose of the public school system is the education of students through instruction and experiences, and standardized testing is a supplementary, necessary, but clearly subordinate activity to that purpose; and

WHEREAS, the Department of Education has established a Foundation Program which, among other things, defines the academic skills and essential competencies expected of students; and

WHEREAS, to determine progress towards attainment of the skills and competencies, the Department has in effect the Foundation Program Assessment and Improvement System which includes a variety of statewide standardized tests; and

WHEREAS, the tests include the Stanford Achievement Test, tests for Competency-Based Measures, and Hawaii State Test for Essential Competencies; and

WHEREAS, the House of Representatives, however, questions the need for different tests which measure the same skills, the purposes for the tests, the methods by which results are evaluated and applied to improve student performances, and the worth of the tests to teachers in their day-to-day classroom instruction; and

WHEREAS, for example, the Stanford Achievement Test measures reading and mathematics skills, which Competency-Based Measures tests also measure; and

WHEREAS, another concern is that test results are not provided to teachers in a timely fashion nor evaluated to the degree necessary to give teachers practical understanding of the problems of their students; and

WHEREAS, finally, the tests seem to be more for the use of administrative personnel to determine student achievements on a statewide basis, rather than as a tool for improvement of the student on an individual basis; and

WHEREAS, the House of Representatives recognizes that testing is necessary to determine whether desired instructional goals are being achieved, but the current statewide standardized testing program of the Department of Education must be examined in order to make improvements; now, therefore,

BE IT RESOLVED by the House of Representatives of the Thirteenth Legislature of the State of Hawaii, Regular Session of 1985, that the Legislative Reference Bureau is requested to examine the statewide standardized testing program of the Department of Education; and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau review the intent of the testing program; purposes, appropriateness, and necessity of the various tests provided under the program; desirability of streamlining the testing program; worth of the tests to teachers in understanding the instructional achievements and deficiencies of their students; benefits of the tests to students; and problems regarding evaluation and timely delivery of results; and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau submit its findings and recommendations to the Legislature prior to the convening of the Regular Session of 1986; and

BE IT FURTHER RESOLVED that a certified copy of this Resolution be transmitted to the Director of the Legislative Reference Bureau.

APPENDIX B

LEGAL IMPLICATIONS OF STANDARDIZED TESTING PROGRAMS

by Karl-Reinhardt Titczk

I. Introduction

Several court decisions and many law review articles¹ indicate the appropriateness of an analysis of the legal implications of standardized testing programs within a study of Hawaii's standardized testing programs.

This note examines in its first part the constitutional law challenges to minimum competency testing.

A constitutional right to an education, either under the United States Constitution or the State Constitution of Hawaii, could have a double effect. First, it could lead to a legal action under federal and state laws and secondly, to a high degree of legal scrutiny of malpractice in education. Therefore, this note explores whether there is a constitutional right to an education.

Thereafter, the potential procedural and substantive due process challenges to such programs are analyzed. Reviewing court decisions and law articles, one finds such challenges based on either property or liberty interests.

Subsequently, though with less emphasis, the impact of the equal protection clause is examined.

Legal action against minimum competency testing might be brought under section 1983 of Title 42 U.S.C. either to obtain an injunction or declaratory judgment against the enforcement of unconstitutional laws or policies or to seek money damages from officials whose conduct exceeds legal bounds.

Finally, the note explores whether there are civil law remedies. Although tort actions alleging educational malpractice have not yet been successful, warnings have been raised that minimum competency legislation can give rise to a legal duty of care.

The question whether teachers owe a duty of care is discussed in a broader sense.

Other elements of negligence such as breach of duty and the suffered injury contain fewer legal problems. Nevertheless, plaintiffs may have their difficulties in showing that the teacher (as defendant) was negligent and that therefore the student suffered injury through a breach of that duty (causal connection).

If negligence is found on the part of the teacher, the State of Hawaii would be responsible for its employee's action under the State Tort Liability Act.²

II. Constitutional Implications of Minimum Competency Testing

A. Constitutional Right to an Education

1. The Constitution of the United States of America

In dealing with minimum competency testing, we have to first analyze whether minors have rights independent of their parents. Several decisions of the U.S. Supreme Court indicate that minors may have certain rights independent of their parents or any other adult.³

Once a minor's rights have been established, we secondly have to explore whether students have a constitutionally guaranteed right to an education.

The enormous public expenditures and the fact that almost every citizen is affected by education, as a student or parent, emphasizes the importance of education. Therefore, there is hardly any doubt about the significance of education in the United States and elsewhere.

The United States Supreme Court highlighted the role of education in *Brown v. Board of Education*:

[T]oday, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities.... It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him...to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education...[it] is a right which must be made available to all on equal terms. (citations omitted)⁴

Although the Supreme Court recognized this vital function of education in society, the Court expressly denied the existence of a fundamental right to an education under the Constitution of the United States. (Emphasis added.)

In *San Antonio School District v. Rodriguez*, where the plaintiffs tried to prove that the financing of public schools, based on state and local participation, (the districts supplemented state aid through an ad valorem tax on property) would violate the rights of those children residing in a district having a low property tax base, the Court stated that:

Education...is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected.⁵

Nevertheless, the majority vote of the Court hinted that a minimal proficiency in the basic skills may be constitutionally protected.⁶

On the other hand, some justices brought forward legal arguments to recognize a fundamental right to an education. In the very narrow 5:4 majority decision, Justice Marshall (with whom Justice Douglas concurred) voiced his disagreement with the Court's approach to equal protection analysis in a general and a specific way.

He did not accept the majority's efforts to demonstrate that fundamental interests, which call for strict scrutiny of the challenged classification, encompass only established rights which are expressly mentioned in the Constitution, such as every citizen's right to travel, right to procreate, or right to vote in state elections. Instead, he tried to give a formula to determine the fundamental interests not to be found expressly in the Constitution:

Although not all fundamental interests are constitutionally guaranteed, the determination of which interests are fundamental should be firmly rooted in the text of the Constitution. The task in every case should be to determine the extent to which constitutionally guaranteed rights are dependent on interests not mentioned in the Constitution. As the nexus between the specific constitutional guarantee and the nonconstitutional interest draws closer, the nonconstitutional interest becomes more fundamental and the degree of judicial scrutiny applied when the interest is infringed on a discriminatory basis must be adjusted accordingly.⁷

Thereafter, Justice Marshall raised the question whether education is guaranteed by the Constitution. Discussing the direct effect of education on "the ability of a child to exercise his First Amendment rights, both as a source and a receiver of informations and ideas",⁸ he argues:

The opportunity for formal education may not necessarily be the essential determinant of an individual's ability to enjoy throughout his life the rights of free speech and association guaranteed to him by the First Amendment. But such an opportunity may enhance the individual's enjoyment of those rights, not only during but also following school attendance.⁹

He went on to point out the particular connection between education and the political process:

Education serves the essential function of instilling in our young an understanding of and appreciation for the principles and operation of our governmental processes. Education may instill the interest and provide the tools necessary for political discourse and debate. Indeed, it has frequently been suggested that education is the dominant factor affecting political consciousness and participation. A system of "[c]ompetition in ideas and governmental policies is at the core of our electoral process and of the First Amendment freedoms." But of most immediate and direct concern must be the demonstrated effect of education on the exercise of the franchise by the electorate. (citations omitted)¹⁰

2. Decisions of State Supreme Courts

Although education clauses are unique to state constitutions, the hope that state litigation would constitutionalize educational entitlements unavailable at the federal level has in many cases proved illusory.¹¹

The Georgia Supreme Court's opinion upholding a local property tax system of school finance exemplifies the incorporation of *Rodrigues* into state law. The Court found "some guidance" in "the fact that education is not a 'fundamental right' under the U.S. Constitution".¹²

Notwithstanding the state constitution's education clause, the Court held that there was no fundamental right to an education.¹³ The Georgia education clause (Art. VIII, Paragraph 1 of Common Schools; Free Tuition) reads as follows:

The provision of an adequate education for the citizens shall be a primary obligation of the State of Georgia, the expense of which shall be provided for by taxation.

The Alaska Supreme Court similarly held there was no state constitutional right to local schools¹⁴ in a suit brought by native Alaskans to compel the state to build schools in remote communities.

Courts rejecting state law relief almost invariably argue that the suggestion in *Rodrigues* that a constitution's explicit mention would trigger strict scrutiny is incorrect as a matter of federal constitutional interpretation.¹⁵ Courts in Oregon,¹⁶ Ohio,¹⁷ Idaho,¹⁸ and Georgia¹⁹ criticized *Rodrigues* to justify upholding school finance systems.

On the other hand, the Connecticut Supreme Court struck down local property tax schemes holding that education was accorded fundamental status by the state constitution.²⁰ The Connecticut Constitution (Art. VIII, Sec. 1) reads as follows:

There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation.

The Connecticut Supreme Court also found that education was sufficiently important to society to be classed as a fundamental right even without reference to the text of the state constitution.

The New Hampshire Supreme Court ruled that excluding nonpaying students residing on federal military installations from public schools violated the state constitution. The Court ruled that, although *Rodrigues* might authorize a failure to provide the minimal education necessary to facilitate the rights of suffrage and free speech, the state constitution clearly would not.²¹

In the first post-*Rodrigues* decision to overturn a state's system of financing public education, the New Jersey Supreme Court interpreted the state educational clause to guarantee "equal educational opportunity".²²

The New Jersey Constitution provides in Article VIII, Section IV, Paragraph 1:

The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all children in the State between the ages of five and eighteen years.

and in Paragraph 2 for a:

...fund for the support of free public schools....

A Colorado court, addressing a state law equal protection attack on local property tax financing, stated that the rights to vote and to petition the government, both guaranteed in the state constitution, generated a fundamental state constitutional right to equal educational opportunity.²³

Article 9, Section 2, of the Colorado Constitution states:

Establishment and maintenance of public schools. The general assembly shall, as soon as practicable, provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state, wherein all residents of the state, between the ages of six and twenty-one years, may be educated gratuitously....

The several state courts have subjected the "Rodrigues-analysis" to a pincerlike movement. Succeeding supreme courts may have difficulties drawing conclusions from the contradictory decisions.

3. The State Constitution of Hawaii

To determine whether there is a fundamental right to an education in Hawaii an examination of the relevant state constitutional provisions must be made. The Bill of Rights (Art. I) does not mention education.

Article X, Section 1, of the Constitution, however, provides:

The State shall provide for the establishment, support and control of a statewide system of public schools free from sectarian control, a state university, public libraries and such other educational institutions as may be deemed desirable, including physical facilities therefor. There shall be no discrimination in public educational institutions because of race, religion, sex or ancestry; nor shall public funds be appropriated for the support or benefit of any sectarian or private educational institution....

The other sections of Article X dealing with lower education are section 2 (Board of Education), section 3 (power of the Board of Education), and section 4 (Hawaiian Education Program).

None of these provisions expressly mentions a fundamental right to an education. The Hawaii Supreme Court may find that the language clearly

expresses the intention of the framers not to guarantee a fundamental right to an education. On the other hand, such a right could emerge from constitutional interpretation of Article X in connection with Article I.

The starting point of such an interpretation is the text of the constitution itself to give full effect to the intention of the framers and the people adopting the constitution.

Based on an argument that Article X is ambiguous, the Court could proceed to analyze the context of the provisions. The Court would find that the educational provisions are not mentioned under the Bill of Rights but in very close juxtaposition with "Public Health and Welfare."

A next step of legal interpretation would be "to determine the intent of the framers and the people adopting" the constitution by examining extrinsic aids.

Drafted originally in 1950, the Constitution of Hawaii was amended in 1968 and 1978.

The Committee on Education of the 1950 Constitutional Convention proposed a separate education article in the Constitution to express basic principles with reference to the subject matter concerned.

The Committee reported:

This is a recognition of the unique function of public education in a democratic state--a function deserving more than a word, a sentence, or a single paragraph.²⁴

It can be reasoned that the Committee supported a separate article on Education, composed of five sections, each dealing with basic principles. Section one provided in part:

...a general mandate upon the state to provide for publicly supported education.²⁵

In 1950, the Committee obviously did not think about the existence of a right to education, although it emphasized the significance of education.

The Committee on Public Health, Education and Welfare; Labor and Industry of the Constitutional Convention in 1968, however, expressed their reservations about guaranteeing a "free" education:

...This concern as well as the need for adequate educational programs at public expense to overcome the adverse effects of poverty, infirmity or other individual handicaps or disadvantages, was shared by the entire membership of your Committee, but the majority view was that inclusion of the word free has such deep implications in the State's overall budgeting process that it would be better to leave to legislative enactment and statutory law, rather than constitutional law, the kind and extent of public funding needed for the State's public schools.²⁶

Apart from the question of a free education or a fundamental right to an education the Public Health and Welfare; Labor and Industry Committee similarly contemplated in the 1978 Constitutional Convention the economic security of the elderly:

However, your Committee was concerned that the limited resources of the state might not provide sufficient revenue for everything that we might like to do for the elderly. Thus, your Committee found that it would be better to leave the final decision regarding allocation of money to the discretion of the legislature. Finally, your Committee did not intend by including this section to prohibit the State from spending money in other important areas, such as in the youth of the State.²⁷

In favoring a fundamental right to an education, the Court might reason that in the present time the government has become a provider of services and economic security, and that, therefore, a fundamental right exists. By incorporating education into the state constitution, education has not only been recognized but is a right in connection with Article I of the Constitution of Hawaii.

On the other hand, the separation of powers doctrine would be used to counter this argument. In a system of checks and balances, it is up to the legislature to decide where government spends public money.

The foregoing suggests that reasons may be cited for the Hawaii Supreme Court either to deny or to recognize a state fundamental right to an education.

It seems, however, that there are more grounds to deny such a right.

B. Procedural Due Process

Due process is understood in two senses: procedural and substantive. Procedural due process requires that before the government takes an action which will affect a person's life, liberty, or property interest, the person is entitled to prior notice and an opportunity to be heard before an impartial tribunal.²⁸ The Supreme Court designed due process in this sense to achieve fundamental fairness.²⁹ Courts have almost exclusively focused on the adequacy of notice.³⁰ The examination of an infringement of due process, thus, proceeds in two steps:

One must first decide whether some constitutionally protected liberty or property interest exists and must then determine what procedures must precede the deprivation of that interest.³¹

1. Property Interest

The Supreme Court of the United States held in *Goss v. Lopez* that protected interests in property are normally not created by the Constitution but by an independent source such as state statutes or rules entitling a person to certain benefits.³²

In *Debra P. v. Turlington*, the Fifth Circuit relied upon Florida's mandatory attendance statute in holding that the State had created a mutual expectation that students who successfully completed all of their coursework would graduate with a diploma.³³ The Court gave rise to an implied property right to receive a diploma.³⁴

In *Bestera v. Tuscaloosa City Board of Education*, the Eleventh Circuit decided that students challenging minimum reading standards for promotion had "no property right in an expectation that they (would) be promoted despite objectively substandard classroom work."³⁵ The Court distinguished *Debra P.*, noting that *Debra P.* challenged denial of a diploma on the basis of a test "unrelated to academic work required in the school."³⁶

An Hawaiian court might find a property interest under section 298-9, Hawaii Revised Statutes. This section reads in part as follows:

Unless excluded from school or excepted from attendance, all children who will have arrived at the age of at least six years, and who will not have arrived at the age of eighteen years,... shall attend either a public or a private school for and during such school year....

On the other hand, in addition to *Bestera*, various reasons have been brought up to deny a property right.³⁷

One author argues that any property interest that exists is a right to an education, not a diploma. Secondly, the author finds it improper to rely on mandatory attendance statutes as a source of the property interest in a diploma. "While the attendance requirement typically lasts only until students are sixteen years old, most students at that age have not yet satisfied all of the prerequisites for receiving a high school diploma."³⁸

2. Liberty Interest

Liberty, guaranteed by the Fourteenth Amendment, denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, to establish a home and bring up children,³⁹ and also to enjoy an untarnished reputation.⁴⁰

To fall within the reputation strand of protected liberty, a plaintiff must show a stigmatizing governmental action and that falls within a "reputation-plus category."⁴¹ That is to say, the publicly stigmatized individual must be affected by additional consequences. Students who are denied their diplomas may fall within this "plus" category. The University of Hawaii will normally not admit a student who has failed to obtain a high school diploma or an equivalent diploma (Graduation Equivalent Diploma).

Some courts have also found that withholding diplomas from students who fail a minimum competency test, thus labeling them "illiterate", is stigmatizing.⁴²

In *Goss v. Lopez*,⁴³ the Supreme Court suggested that communicating this stigmatizing information to a student's classmates and teachers may sufficiently trigger a deprivation of liberty.⁴⁴

Finally, the future employment opportunity strand of liberty has been suggested by an author as another challenge to minimum competency testing.⁴⁵

3. Legal Challenges Because of Failure of Procedural Due Process

In *Mathews v. Eldridge*,⁴⁶ the U.S. Supreme Court provided a formula for determining what process is due:

[O]ur prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.⁴⁷

The private interest affected by the official action of denying a diploma would be psychological and economic. Students who fail the minimum competency tests are stigmatized and psychologically damaged by the failure to receive a diploma.

Minimum competency testing programs may entail different kinds of erroneous deprivation. Scoring errors, coding errors, computer errors are not unlikely.⁴⁸

Another step in the consideration of the benefit of alternative procedures includes the right to retake the examination and the duty of the state to provide a copy of the minimum competency test (questions and answers, as well as the student's answer sheet) to every student who fails the test.⁴⁹

Finally, one has to look at the government's interest. First, states have an interest to avoid the cost of additional procedures. Second, state officials are concerned with improving the public educational system and the standard of knowledge among the students within the state.⁵⁰

Balancing those four elements under the *Mathews v. Eldridge* procedural due process of law definition requires the need to impose minimally burdensome procedural safeguards. Therefore, for example, one and one-half years between enactment and implementation of minimum competency testing programs may constitute inadequate notice and may be a violation of due process.⁵¹ Scoring errors, coding errors, and computer errors may lead to the same effect. Thirdly, a competency test that covers material never taught--material to which students may have never been exposed--is an inaccurate determinant of competency, and thus may result in an erroneous deprivation of due process.

Due process is therefore intended to guarantee an accurate, fair, and foreseeable procedure. By implementing procedures that provide students with an opportunity to retake the competency test or have it regraded and that establish the instructional validity of the test, courts can help ensure the procedural fairness of minimum competency tests.⁵²

On the other hand, due process does not provide a means to guarantee the awarding of a diploma.⁵³

C. Substantive Due Process

From about 1900 to 1935, the Supreme Court developed the concept of substantive due process as a means of holding unconstitutional various kinds of economic and social regulations. Its most common formulation was "freedom of contract."⁵⁴ The Court, however, began in 1934 to break down this concept.

Today, the main function of substantive due process of law may be described as a "right to privacy."⁵⁵ The main case in which the United States Supreme Court referred to this "right to privacy" concerned abortion.⁵⁶

However, the Supreme Court does not interpret it as a wide concept of constitutional law. The Supreme Court declined, for example, to extend the right of privacy to any kind of private sexual activity, by affirming without opinion a lower court ruling upholding a Virginia law prohibiting consensual sodomy.⁵⁷

Although in *Debra P.*, the Circuit Court explained:

The due process violation goes deeper than deprivation of property rights without adequate notice....⁵⁸

it is because of the Supreme Court's narrowly circumscribed approach to the substantive due process doctrine⁵⁹ that this action is not likely to apply as a basis for invalidating decisions to withhold diplomas or other violations.

D. Equal Protection of the Law

Another basis of challenging minimum competency testing is the equal protection clause, which is a matter of the constitutional prohibition of discrimination between and among persons or other legal entities.

If some persons are given a particular advantage or disadvantage by the government, it is discriminatory not to treat others similarly situated in the same way. For example, there is no constitutional right to free public education (see above). But if a free public education is given to some persons, it must be given to other persons similarly situated without unreasonable discriminations.⁶⁰

Although minimum competency testing places students into two categories (those who pass the test, and those who fail), this is not

necessarily an infringement of the equal protection clause when the differentiation is based on a rational basis.

For example, if implemented with an accurate procedure, the courts will find that different performances are scored differently, and this would be a constitutionally permitted reason for differentiation. The equal protection clause does not provide for an equalization of people but provides that the same shall be treated equally, the diverse unequally.

An erroneous scoring method and a test which covers material which was not taught, however, would not be a rational basis and would, therefore, violate the equal protection clause.⁶¹

E. Statutory Enforcement of Constitutional Rights

Plaintiffs are likely to bring legal action against minimum competency testing on two grounds. In the first place, they might want to obtain an injunction or declaratory judgment against the enforcement of unconstitutional laws or policies. Secondly, they may seek to secure money damages from officials who exceed legal bounds.

Both legal actions are empowered under section 1983 of the United States Code. This section of the note will analyze whether legal action can be brought against the state under section 1983.

Section 1983 reads as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or any other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

1. Deprivation of Any Right

The different fundamental rights of students which may be infringed by an unreasonable withholding of a diploma were analyzed above. The plaintiffs may challenge tests because of an infringement of due process and the equal protection clause (see above). However, a retake of the examination or other procedural means will normally satisfy the plaintiff's complaint; in other cases, it may not. The plaintiff could maintain that the delay caused by the reexamination resulted in a loss of income, a loss of reputation, or both.

2. "Every person" - the Defendant Under Section 1983

The U.S. Supreme Court decided that states are not "persons"⁶² and therefore cannot be defendants under section 1983.

Categorizing school districts and boards of education as persons has caused confusion. The vast majority of cases, however, hold them analogous

to state agencies and political subdivisions.⁶³ They are, therefore, not considered as "persons" under section 1983.

On the other hand, members of the Board of Education and teachers can be sued individually. They are "persons" under section 1983.

3. Color of State Law

As a third condition, the violation must be caused under the "color of state law."

Since *Monroe v. Pape*,⁶⁴ even acts committed in violation of state laws may be deemed "state action" if the action occurs with the appearance of lawful authority.

Monroe did not exclude acts of an official or police officer who could show no authority under state law, custom, or usage to do what he did, or even who violated the state constitution and laws.

If a teacher, therefore, violates a student's fundamental rights (see above) in the classroom, the teacher's action may be deemed "state action" because the action occurs with the appearance of lawful authority.

4. Personal Immunities

Fourthly, as a negative criterion, no personal immunity may exist.

The Supreme Court exempted some state officials in certain circumstances from damages under section 1983. Absolute common-law immunities, which had already been recognized for legislators, were adopted for judges and prosecutors, state-employed public defenders, and persons who act in legislative capacities.⁶⁵

5. Indemnification for Teachers Liable Under Section 1983

As stated above, states themselves cannot be defendants under section 1983. They could be responsible for the teachers' damages if the State of Hawaii had granted indemnification for teachers.

It seems, however, that in Hawaii this is not the case. One legal means could be section 662-2, Hawaii Revised Statutes, which reads in pertinent part:

The State hereby waives its immunity for the liability for the torts of its employees and shall be liable in the same manner and to the extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.

It appears that section 1983 is a basis to sue the individual teacher and individual members of the Board of Education, but not the State.

Section 26-35.5, Hawaii Revised Statutes, however, contains an immunity or an indemnification for the members of the Board of Education which would transfer the responsibility resting before on the individual member to the State.

Besides legal action under section 1983 against the individual teacher, legal action might also be brought under 28, U.S.C., section 1331 (Federal Question-Action).

III. Common-Law Remedies

In *Peter W. v San Francisco Unified School District*,⁶⁶ a high school graduate brought action against a city school district, seeking to recover for alleged negligence and intentional misrepresentation on the part of the school district which deprived him of basic skills.⁶⁷

A. Negligence

In order to establish liability for negligence in Hawaii, "...it is incumbent upon the plaintiff to show three things: First, a breach of duty which defendant owed the plaintiff; second, a negligent breach of that duty; and, third, injuries received thereby resulting proximately from that breach of duty."⁶⁸

Several courts have denied the existence of negligence in cases of malpractice of education. The California Court of Appeals stated:

We find in this situation no conceivable "workability of a rule of care" against which defendants alleged conduct may be measured..., no reasonable "degree of certainty that...plaintiff suffered injury" within the meaning of the law of negligence..., and no such perceptible "connection between the defendant's conduct and the injury suffered", as alleged, which would establish a causal link between them within the same meaning....⁶⁹

Nevertheless, the three elements are analyzed subsequently.

1. Defining Duty of Care

The general principle remains that the law at all times requires such care as individuals of ordinary prudence would use under similar circumstances, and the amount of care which prudent individuals would exercise under the circumstances.⁷⁰

This rather vague definition of a duty of care leaves much room for interpretation.

In *Peter W.* the court relied on the public policy doctrine, which is basically that principle of the law which holds that no subject can lawfully do that which has the tendency to be injurious to the public or against the public good, to deny a duty of care.

A departure from the principle would depend on the balancing of the following factors:

- foreseeability of harm to the plaintiff
- degree of certainty that the plaintiff suffered injury
- the closeness of the connection between the defendant's conduct and the injury suffered
- the moral blame attached to the defendant's conduct
- the policy of preventing future harm

In *Peter W.* these factors are not widely contemplated, but the Court stated:

Unlike the activity of the highway or the marketplace, classroom methodology affords no readily acceptable standards of care, or cause, or injury. The science of pedagogy itself is fraught with different and conflicting theories of how or what a child should be taught, and any layman might--and commonly does--have his own emphatic views on the subject. The "injury" claimed here is plaintiff's inability to read and write. Substantial professional authority attests that the achievement of literacy in the schools, or its failure, are influenced by a host of factors which affect the pupil subjectively, from outside the formal teaching process, and beyond the control of its ministers. They may be physical, neurological, emotional, cultural, environmental; they may be present but not perceived, recognized but not identified.⁷¹

2. Criticism of *Peter W.*

The criticism of the *Peter W.* case is based on two main points.

Jay M. Pabian, writing in the *New England Law Review*, finds it difficult to understand how the Court could conclude that there was no legal duty, after analyzing the public policy considerations⁷² (see above).

Engel analyzes the possible impacts of introducing minimum competency testing, arguing a standard of care could emerge after establishing minimum competency testing.⁷³

A duty of care might also emerge from the fact that teachers and school personnel in general assume an *in loco parentis* role. Courts have already recognized the existence of negligence in cases of physical injury.

Teachers in those cases carried major supervisory responsibilities for activities of students while in the classroom and their movement throughout the school building. As should be expected, involvement by students in school-related hazardous activities requires a great deal of careful supervision on the part of the instructor.⁷⁴

Although less provable, psychological damages and illiteracy can create much more harm than physical injuries. One has also to take into account that Hawaii has made it compulsory to attend school.

3. Negligent Breach of Duty and Injury Received Thereby Resulting Proximately from that Breach

Engl argues that the negligent breach of duty and the injury received thereby resulting proximately from that breach could also emerge after establishing minimum competency testing. It seems that both conditions are more a matter of practical proof than of legal analysis. They may be, therefore, left aside. If all grounds for negligence were found, the State would be liable under the State Tort Liability Act.

B. Intentional Misrepresentation

Another civil challenge could be intentional misrepresentation. Misrepresentation is understood as any manifestation by words or other conduct by one person to another that, under the circumstances, amounts to an assertion not in accordance with the facts.

In the Peter W. case the plaintiff alleged:

Defendant school district, its agents and employees, falsely and fraudulently represented to plaintiff's mother and natural guardian that plaintiff was performing at or near grade level in basic academic skills such as reading and writing.... The representations were false. The plaintiff charges defendants knew that they were false, or had no basis for believing them to be true.⁷⁵

The Court denied, however, an intentional misrepresentation on the basis that "it (court) alleges no facts showing the requisite element of reliance upon the 'misrepresentation' it asserts".⁷⁶

Pabian criticized the Court's result:

In summary, an action for misrepresentation whether in deceit or negligence, is feasible where a school district awards grades, diplomas, and positive test results which falsely reflect a student's ability. Teachers and other school personnel must be held accountable not only for exercising their duties with care and skill, but also for properly informing students and parents of any problems or deficiencies. Indeed, if parents are informed of their child's difficulties at an early stage of their education, appropriate action can be taken before significant damage occurs.⁷⁷

Plaintiffs will have difficulties, however, in convincing courts of the existence of that kind of reliance the Peter W. court found lacking.

Conclusion

Education has been for a long time a major political issue within the United States. The challenge of malpractice in education is, however, a novelty.

The legal implications of standardized programs fall into this category. This note explored aspects of constitutional and common law in those programs.

In the first part, it dealt with substantive and procedural constitutional law.

Dealing with the substantive constitutional implications, the note finds--analyzing the United States Supreme Court decisions--that there is no constitutional right to an education under the U.S. Constitution.

Secondly, it is also likely that the Hawaii Supreme Court would deny such a right under the Constitution of Hawaii, although the Constitution emphasizes the importance of education in Article X, and other state supreme courts have recognized a right to an education under their jurisdiction.

The note thereafter established that there are, however, constitutional challenges which may be made to such programs. Finding reasons for either liberty or property interests, courts have enforced the due process clause in its procedural meaning.

The equal protection clause and the concept of substantive due process seem to be less effective means to question minimum competency testing programs. Substantive due process is understood narrowly as the "right to privacy" and, therefore, may be less relevant. The equal protection clause will not often serve as one, although students were treated differently in granting a diploma or not. Those differentiations will normally rest upon a rational basis.

The procedural means to challenge violations of any constitutional right may be section 1983 of Title 42 U.S.C. and section 1331 of Title 28 U.S.C. Beyond that, section 1983 is analyzed as a means to sue, in addition to the individual teacher or member of the Board of Education, the state. The note finds that states are not "persons" under 1983 and cannot be defendants under that statute and that there is no indemnification for the individual breaches granted by the state. On the other hand, the law grants an indemnification for the individual members of the Board of Education (section 26-35.5, Hawaii Revised Statutes).

The second part examined the common law aspects of minimum competency testing programs. Courts denied a negligent breach of duty in cases of malpractice in education, mainly because they found no legal duty of care. Analyzing several law review articles, the note finds some good reasons may be found to establish a duty of care, especially after the introduction of minimum competency testing programs.

Finally, the note dealt with intentional misrepresentation, which is not likely to be a successful plaintiff's argument, mainly because the cause may not allege the requisite element of reliance upon the misrepresentation.

FOOTNOTES

1. The following list gives a survey of a number of articles published on the impact of Minimum Competency Testing:

James P. Durling, Testing the Tests: The Due Process Implications of Minimum Competency Testing, 59 N.Y. Univ. L. Rev. 577 (1984); Linda J. Strassle, Minimum Competency Testing of Teachers for Certification: Due Process, Equal Protection and Title VII Implications, 70 Cornell L. Rev. 494 (1985); Steven Schreiber, High School Exit Tests and the Constitution: Debra P. v. Turlington, 41 Ohio St. L. J. 1113 (1980); Clague, Competency Testing and Potential Constitutional Challenges of "Everystudent," 28 Cath. U.L. Rev. 469 (1979); Gunn, Debra P. v. Turlington: Due Process Enters the Classroom, But How Far?, 11 J.L. & Educ. 573 (1982); Lewis, Certifying Functional Literacy: Competency Testing and Implications for Due Process and Equal Educational Opportunity, 8 J.L. & Educ. 145 (1979); Logar, Minimum Competency Testing in Schools: Legislative Action and Judicial Review, 13 J.L. & Educ. 35 (1984); Young, Legal Aspects of Minimum Competency Testing in the Schools, 16 Land & Water L. Rev. 561 (1981); Note, Educational Malpractice and Minimal Competency Testing: Is There a Legal Remedy at Last?, 15 New Eng. L. Rev. 101 (1979); Note, Functional Literacy: A Matter of Timing, 10 Stetson L. Rev. 125 (1980); Note, State-Mandated Literacy Test as a Condition to Receipt of High School Diploma Violates the Equal Protection and Due Process Clauses--Debra P. v. Turlington, 55 Temp. L.Q. 460 (1982); Comment, Minimum Competency Testing--Redundancy or Necessity? An Analysis of the Educational and Legal Issues, 15 Akron L. Rev. 91 (1981); Comment, High School Exit Tests and the Constitution: Debra P. v. Turlington, 41 Ohio St. L.J. 1113 (1980); Comment, Implications of Minimum Competency Legislation: A Legal Duty of Care?, 10 Pac. L.J. 947 (1979); Comment, Functional Literacy Testing and the Denial of High School Diplomas in a Post-Desegregation Setting: Debra P. v. Turlington, 33 Rutgers L. Rev. 564 (1981); Comment, Minimum Competency Testing: Education or Discrimination?, 14 U. Rich. L. Rev. 769 (1980); McClung, Competency Testing Programs: Legal and Educational Issues, 47 Fordham L. Rev. 651 (1979); Tractenberg, The Legal Implications of Statewide Pupil Performance Standards (1977) (unpublished paper available in microfiche from Education Resources Information Center).

2. Hawaii Rev. Stat., ch. 662.
3. Pabian, Educational Malpractice and Minimal Competency Testing: Is there a Legal Remedy at Last? 15 New England L. Rev. 101, 125 (1979-80).
4. 347 U.S. 483, 493 (1954).
5. 411 U.S. 1, 35 (1973).
6. Ibid., p. 37 (1973).

7. Ibid., pp. 102-103 (1973).

Justice Brennan also dissenting, using similar wording: "...'fundamentality' is, in large measure, a function of the rights important in terms of the effectuation of those rights which are in fact constitutionally guaranteed. Thus, '[a]s the nexus between the specific constitutional guarantee and the nonconstitutional interest draws closer, the nonconstitutional interest becomes more fundamental and the degree of judicial scrutiny applied when the interest is infringed on a discriminatory basis must be adjusted accordingly.' Here, there can be no doubt that education is inextricably linked to the right to participate in the electoral process and to the rights of free speech and association guaranteed by the First Amendment." Ibid., pp. 62-63 (1973).

8. Ibid., p. 112 (1973).

9. Ibid., pp. 112-113 (1973).

10. Ibid., pp. 113-114 (1973).

11. "Developments in the law: The interpretation of state constitutional rights," 95 Harvard L. Rev. 1324, 1447 (1982).

12. McDaniel v. Thomas, 248 Ga. 632, 647, 285 S.E.2d 156, 167 (1981).

13. 95 Harvard L. Rev. 1324, 1453.

14. Hootch v. Alaska State-Operated School Sys., 536 P.2d 793, 796, 805 (Alaska 1975).

15. 95 Harvard L. Rev. 1324, 1455.

16. Olsen v. State ex rel. Johnson, 276 Or. 9, 19-20, 554, P.2d 139, 144-145 (1976).

17. Board of Education v. Walter, 58 Ohio St. 2d 368, 375, 390 N.E.2d 813, 818-19 (1979).

18. Thompson v. Engelking, 96 Idaho 793, 804, 537 P. 2d 635, 644-45 (1975).

19. McDaniel v. Thomas, 248 Ga. 632, 646, 285 S.E.2d 156, 166-67 (1981).

20. Horton v. Meskill, 172 Conn. 615, 644-45, 376 A.2d 359, 372-73 (1977).

21. Opinion of the Justices, 118 N.H. 347, 349, 387 A.2d 333, 335 (1978).

22. Robinson v. Cahill, 62 N.J. 473, 303 A.2d 273 (1973).

23. Lujan v. Colorado State Board of Education, 649 P.2d 1005 (1982).
24. Hawaii, Constitutional Convention, 1950, Proceedings, Vol. 1, Standing Committee Report No. 52, p. 201.
25. Ibid., pp. 201-202.
26. Hawaii, Constitutional Convention, 1968, Proceedings, Vol. 1, Standing Committee Report No. 41, p. 204.
27. Hawaii, Constitutional Convention, 1978, Proceedings, Vol. 1, Standing Committee Report No. 36, p. 584.
28. Hawaii Constitutional Convention Studies 1978, Introduction and Article Summaries, Legislative Reference Bureau (Honolulu: 1978), p. 10.
29. San Antonio School District v. Rodriguez, 411 U.S. 1, 112 et seq. (1973).
30. Durling, Testing the Tests: The Due Process Implications of Minimum Competency Testing 59 N.Y. L. Rev. 577, 589 (1984). See Brookhart v. Illinois State Board of Educ., 697 F.2d 179, 186-87 (7th Cir. 1983) (one and one-half years between enactment and implementation of minimum competency testing program constitutes inadequate notice; Debra P. v. Turlington, 644 F.2d 397, 404 (5th Cir. 1981) (affirming district court's conclusion that fifteen months notice was inadequate).
31. Durling, p. 587.
32. 419 U.S. 565, 572 (1974).
33. Debra P. v. Turlington, 644 F.2d 397 (1981).
34. Ibid., at 404.
35. Bestera v. Tuscaloosa City Board of Education, 722 F.2d 1514 (11th Cir. 1984).
36. Ibid., at 1516.
37. Durling, p. 591 et seq.
38. Ibid., p. 591.
39. Board of Regents v. Roth, 408 U.S. 564, 572 (1971).
40. Durling, p. 594.
41. Ibid., p. 595.

42. Brookhart v. Illinois State Board of Educ., 697 F.2d 179, 184-85 (7th Circuit 1983).
43. 419 U.S. 565 (1975).
44. Ibid., p. 575 (1975).
45. Durling, p. 603 et seq.
46. 424 U.S. 319 (1976).
47. Ibid., pp 334-35 (1976).
48. Honolulu Advertiser, July 28, 1985, p. A-1.
49. Durling, pp. 617-18.
50. Ibid., pp. 614-15.
51. Ibid., pp. 577, 589.
52. Ibid., p. 632.
53. Ibid., p. 625.
54. Jerre S. Williams, Constitutional Analysis in a Nutshell (St. Paul, Minnesota: West Publ. Co., 1979), p. 284.
55. Ibid., p. 285.
56. Roe v. Wade, 410 U.S. 113 (1973).
57. C. Herman Pritchett, Constitutional Civil Liberties (New Jersey: Prentice Hall, Inc., 1984), pp. 321-22.
58. 644 F.2d 397, 404 (1981).
59. Durling, p. 628.
60. Williams, p. 287.
61. Durling, p. 631.
62. Quern v. Jordan, 440 U.S. 332 (1978).
63. "Developments in the Law-Section 1983 and Federalism," 90 Harvard L. Rev. 1133, 1195 (1977).
64. 365 U.S. 167 (1961).
65. Zagrans, "'Under Color of' What Law: A Reconstructed Model of Section 1983 Liability," 71 Virginia L. Rev. 499, 510 (1985).

66. 60 Cal. App.3d 814, 131 Cal. Rpt. 854 (1976); see also Donohue v. Copiague Union Free School District, 407 N.Y. S.2d 878 (1978).
67. 131 Cal. Rpt. 854 (1976).
68. Young v. Price and Souza, 47 Haw. 309, 314 (1963).
69. Peter W. v. San Francisco Unified School District, 131 Cal. Rpt. 854, 861 (1976).
70. Grand Trunk Railway Co. v. Ives, 144 U.S. 408, 417 (1891).
71. 131 Cal. Rpt. 854, 860-61 (1976).
72. Pabian, p. 110.
73. Engh, "Implications of Minimum Competency Legislation: A Duty of Care?" 10 Pacific L. J. 947, 955 et seq. (1979).
74. E. Gordon Gee and David J. Sperry, Education Law and the Public Schools: A Compendium, (Boston/London/Sydney: Allyn and Bacon, Inc., 1978), p. 27 et seq.
75. 131 Cal. Rpt. 854, 862 (1976).
76. 131 Cal. Rpt. 854, 862-63.
77. Pabian, p. 124.

APPENDIX C

SURVEY RESPONSES

QUESTIONS FOR SCHOOL AND DISTRICT TESTING COORDINATORS

1. Is the centralized ordering of tests, collection, scoring, and processing the proper function of the state DOE?

yes 119 (1) no 5 (2) don't know 10 (3)

2. Does the use of the results of the standardized tests justify the retention and administration of these tests in the schools?

yes 101 (1) no 22 (2) don't know 8 (3)

3. Do the results of the standardized tests assist teachers in a better understanding of the abilities, interests, needs, and achievements of their students?

yes 116 (1) no 8 (2) don't know 8 (3)

4. Do the results of the standardized tests assist students in the evaluation of their achievement and in the understanding of their educational and vocational potential?

yes 78 (1) no 33 (2) don't know 19 (3)

5. Is the school relating current standardized test scores with previous standardized test scores of students, particularly those from feeder schools?

yes 85 (1) no 18 (2) don't know 26 (3)

6. Should the statewide standardized testing program be externally evaluated on a regular basis?

yes 98 (1) no 21 (2) don't know 15 (3)

7. Do you provide test information bulletins on the use of standardized test results for the staff and faculty?

yes 100 (1) no 33 (2)

8. Are workshops and in-service training programs for teachers' utilization of standardized test results provided in the school?

yes 63 (1) no 65 (2)

9. Are grade level meetings held with teachers after the return of each set of standardized test results?

yes 82 (1) no 46 (2)

10. Do teachers feel that they need assistance in interpreting standardized test scores to their students?

yes 73 (1) no 33 (2) don't know 22 (3)

11. Do teachers feel that they need assistance in using standardized test results in their classrooms?

yes 60 (1) no 39 (2) don't know 30 (3)

12. Do teachers interpret the results of the standardized tests to students in their classrooms?

yes 54 (1) no 41 (2) don't know 31 (3)

13. As school testing coordinator, are you given preparation periods for this additional duty?

yes 20 (1) no 101 (2)

14. If you are given preparation periods for this additional duty, please circle one of the following:

less than one (0) ¹⁹1 ¹²2 ⁵3 4 5 or ¹6 periods daily

15. Approximately how many hours per week do you actually devote to your testing coordinator duties? Please circle one of the following:

²0 ²⁹1 ¹⁶2 ¹³3 ¹⁴4 ⁷5 or ²³6 hours weekly

16. How many periods per day should be allotted for adequate performance? Please circle one of the following:

less than one (0) ⁴1 ³⁹2 ¹⁷3 ¹⁵4 ⁴5 or ¹6 periods per day

17. Would you be in favor of a full-time testing coordinator for each school?

yes 49 (1) no 83 (2)

18. Should the statewide standardized testing program address itself to gathering more than just achievement and aptitude data?

yes 64 (1) no 53 (2) don't know 16 (3)

19. Do you feel that there is too much standardized testing in our schools?

yes 57 (1) no 72 (2)

20. Do you believe the statewide standardized testing program is beneficial to the student?

yes 109 (1) no 20 (2)

21. Do you feel that the Stanford Achievement Test is valid and reliable?

yes 107 (1) no 10 (2) don't know 14 (3)

22. Do you feel that the competency-based measures tests are valid and reliable?

yes 25 (1) no 75 (2) don't know 30 (3)

23. Do you feel that the Hawaii State Test of Essential Competencies is valid and reliable?

yes 30 (1) no 25 (2) don't know 72 (3)

24. Have you had any course work in tests and measurements?

yes 127 (1) no 5 (2)

QUESTIONS FOR PRINCIPALS

1. Who is your building testing coordinator?

14 (1) Principal
11 (2) Vice principal
152 (3) Counselor
1 (4) Classroom teachers
3 (5) Others

2. Does your building testing coordinator have the needed time to do an effective job?

yes 79 (1) no 98 (2) don't know 3 (3)

3. Does your building testing coordinator provide consultative help to staff in using and interpreting statewide standardized testing program results?

yes 156 (1) no 25 (2) don't know 3 (3)

4. Does your school have a committee to evaluate the statewide standardized testing program?

yes 40 (1) no 144 (2) don't know 1 (3)

5. If your school doesn't have a committee or you don't know if it has, do you believe it should?

yes 79 (1) no 78 (2)

6. Do you feel that the average classroom teacher is sufficiently trained to interpret standardized test results?

yes 67 (1) no 103 (2) don't know 10 (3)

7. Do you feel that the average classroom teacher is sufficiently trained to use standardized test results?

yes 82 (1) no 88 (2) don't know 11 (3)

8. Do you think there is any need for a full-time testing coordinator in each school?

yes 89 (1) no 85 (2) don't know 9 (3)

9. Do you feel there should be a full-time district testing coordinator?

yes 105 (1) no 59 (2) don't know 20 (3)

10. Do you feel that there is too much standardized testing in our schools?

yes 66 (1) no 115 (2)

11. Do you believe the statewide standardized testing program is beneficial to the student?

yes 156 (1) no 24 (2)

QUESTIONS FOR TEACHERS AND COUNSELORS

1. Should the statewide standardized testing program address itself to gathering more than just achievement and aptitude data?
yes 829 (1) no 829 (2) don't know 358 (3)
2. Do you think there is any need for a full-time testing coordinator in each school?
yes 712 (1) no 1190 (2) don't know 179 (3)
3. Have you had any course work in tests and measurements?
yes 1635 (1) no 438 (2)
4. Are you getting sufficient help from the DOE in the interpretation and use of standardized test results?
yes 745 (1) no 1259 (2)
5. Are you getting sufficient help from your district testing coordinator in the interpretation and use of standardized test results?
yes 603 (1) no 1352 (2)
6. Are you getting sufficient help from the school testing coordinator in the interpretation and use of standardized test results?
yes 984 (1) no 949 (2)
7. Do you feel that the standardized test results come back to you fast enough so as to be used effectively and efficiently?
yes 447 (1) no 1538 (2)
8. Are you satisfied with the standardized test result reports sent back to the schools?
yes 1210 (1) no 745 (2)
9. Do you feel that there is too much standardized testing in our schools?
yes 714 (1) no 1297 (2)
10. Do you feel that the Stanford Achievement Test is valid and reliable?
yes 1016 (1) no 460 (2) don't know 564 (3)

11. Do you feel that the competency-based measures test is valid and reliable?
yes 418 (1) no 883 (2) don't know 744 (3)
12. Do you feel that the Hawaii State Test of Essential Competencies is valid and reliable?
yes 495 (1) no 624 (2) don't know 922 (3)
13. Do you believe that the statewide standardized testing program is beneficial to the student?
yes 1419 (1) no 568 (2)
14. Are you satisfied with the interpretive materials on standardized tests presently being provided by the DOE?
yes 846 (1) no 1067 (2)
15. Do you think that the results obtained from the statewide standardized testing program give you a better understanding of your pupils' knowledge, abilities, aptitudes, and achievement?
yes 1397 (1) no 601 (2)
16. Should there be mandatory attendance at workshops or in-service programs that are designed primarily to illustrate the practical application and interpretation of statewide standardized testing program results?
yes 1034 (1) no 996 (2)
17. Would you like more consultative help pertaining to the statewide standardized testing program from the DOE?
yes 1273 (1) no 731 (2)
18. Are your students given an orientation session to prepare them for the statewide standardized testing program?
yes 837 (1) no 778 (2) don't know 438 (3)
19. Are school personnel given an orientation session on the statewide standardized testing program?
yes 662 (1) no 954 (2) don't know 429 (3)

20. How do you use test score results from the statewide standardized testing program? (Check as many as apply.)

- 1055 (1) Grouping for instruction
- 1082 (2) Placement
- 620 (3) Counseling
- 1251 (4) Diagnosis of students' learning problems
- 684 (5) Evaluating teaching effectiveness
- 312 (6) Don't use them

APPENDIX D

COMPARISON OF SELECTED 1967, 1974, AND 1985 QUESTIONNAIRE RESPONSES

	"Yes" Response Percentages		
	1967	1974	1985
<u>Questions to Testing Coordinators</u>			
Does the use of the results of the state required tests justify the retention and administration of these tests in the schools?	88	44	75
Do the results of the state required tests assist teachers in a better understanding of the abilities, interests, needs, and achievements of their students?	96	58	87
Do the results of the state required tests assist students in the evaluation of their achievement and in the understanding of their educational and vocational potential?	64	36	58
Is the school relating current test scores with previous test scores of students, particularly those from feeder schools?	72	47	63
Do testing coordinators provide test information bulletins for the staff and faculty on the use of test results?	63	51	75
Are workshops and in-service training programs provided in the school for teachers' utilization of test results?	24	12	47
Are grade level meetings held with teachers after the return of each set of test results?	57	43	61
Do teachers feel that they need assistance in interpreting test scores to their students and in using test results in the classroom?	63	55	55
Do teachers interpret the results of the standardized tests to students in their classrooms?	49	37	40
As school testing coordinator, are you given preparation period(s) for this additional duty?	18	10	15
Would you be in favor of a full-time testing coordinator for each school?	39	26	37
<u>Questions to Principals</u>			
Does your building testing coordinator have the needed time to do an effective job?	N/A	45	43
Does your building testing coordinator provide consultative help to staff in using and interpreting Statewide Testing Program results?	N/A	73	84
Does your school have a committee to evaluate the Statewide Testing Program?	N/A	3	22
Do you feel that the average classroom teacher is sufficiently trained to interpret test results?	N/A	27	36
Do you feel that the average classroom teacher is sufficiently trained to use test results?	N/A	28	44
Do you feel there should be a full-time district testing coordinator?	N/A	33	57
<u>Questions to Teachers</u>			
Are you getting sufficient help from DOE in the interpretation and use of test results?	N/A	21	36
Do you feel that the test results come back to you fast enough so as to be used most effectively and efficiently?	N/A	27	22
Are you satisfied with the types of reports sent back to the schools?	N/A	37	58
Do you feel that there is too much testing in our schools?	N/A	16	34
Do you believe the Statewide Testing Program is beneficial to the student?	N/A	38	68
Should there be mandatory attendance at workshops or in-service programs that are designed primarily to illustrate the practical application and interpretation of Statewide Testing Program results?	N/A	53	50

N/A = not asked

APPENDIX E

GEORGE R. ARIYOSHI
GOVERNOR

FRANCIS M. HATANAKA
SUPERINTENDENT



STATE OF HAWAII DEPARTMENT OF EDUCATION

P. O. BOX 2360
HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

November 8, 1985

MEMO TO: Mr. Samuel B. K. Chang, Director
Legislative Reference Bureau

Francis M. Hatanaka
F R O M: Francis M. Hatanaka, Superintendent
Department of Education

SUBJECT: Review & Comments on LRB Report

Thank you for the opportunity to review the report on the Statewide Standardized Testing Program of the Department of Education. Staff members from our Planning and Evaluation Branch and the Office of Instructional Services have reviewed the document and their relevant comments are included in Attachments A and B.

If you have any questions regarding these attachments, please do not hesitate to contact the appropriate offices for further clarification. Thank you for your cooperation in this matter.

FMH-SCC:jo

cc: Planning Branch

- p. 9 The SAT (1973) edition was finally adopted for statewide in 1975 and was administered to grades four & six that fall.
- p. 10 "...the percentage of Hawaii students in the below average category is greater than the national norm."

This statement is not true for all grades. Elementary grades have fewer students below average than the national norm while secondary grades have equal or greater than the national norm scoring below average.

- p. 11 The reference to the subsequent development of the HSTEC after Senate Bill #714 was proposed in 1979 is contradicted within the text a few lines below wherein the report indicates. "The HSTEC was administered for the first time in the fall of 1978..."

Report implies that the department's testing coordinator revised test to correct content area deficiencies. The revisions were with regard to technical inadequacies in the test, NOT content area revisions. Those are handled by the Office of Instructional Services.

- p. 12 Text should specify that all seniors are required to demonstrate mastery of the Essential Competencies either by passing the HSTEC or one of its alternative modes.
- p. 15 HSTEC is not modified annually but rather parallel forms are alternated.
- p. 15 Table 1 data reflects earlier statements regarding plans for CBM and CbyE which were submitted to Budget to obtain proper funding for the Testing Office.

The current plans for CBM and CbyE are not reflected in this report.



Attachment B

STATE OF HAWAII

OFFICE OF INSTRUCTIONAL SERVICES

DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

November 6, 1985

MEMO TO: Dr. Ichiro Fukumoto, Director
Planning & Evaluation Services Branch

F R O M: *for* Claudia Y.H. Chun, Assistant Superintendent
Office of Instructional Services

SUBJECT: Review and Comments on LRB Report: STATEWIDE STANDARDIZED
TESTING PROGRAM OF THE DEPARTMENT OF EDUCATION (Confidential
Draft)

Following are the comments we have on the above draft. If you have any questions, please call us.

- p.9 Error: "Summary reports of the minimum testing program have been done annually since 1967-68 and are reviewed by the State Testing Program Advisory Committee whose recommendations are transmitted through the Office of Instructional Services to the Supt. for final disposition. (only true during time Testing Office was part of OIS)

Question: Is 1976 correct for full implementation of SAT with the addition of grades 8 and 10 when prior sentence cites 1976 as SAT adoption date with grades 4 and 6 administered that fall?

- p.10 Question: Are subtests listed in first sentence correct for all grades? Use of subtests not consistent for language arts and mathematics.

Error: ". . . the percentage of Hawaii students in the 'below average' category is greater than the national norm."

Error: Name of contractor is National Evaluation Systems.

- p.11 Error: ". . . HSTEC was subsequently developed . . ." HSTEC was developed prior to 1979.

Clarification: Wording at bottom of page leads the reader to assume that testing did not occur between 1978 and 1983.

Question: Is ". . . major flaws were discovered in test construction. There was some doubt that the test measured what it purported to measure and some doubt that the content of the test corresponded to the Foundation program objectives on which it was based." true?

Error: More correct to say that HSTEC was developed to measure attainment of the essential competencies rather than the Foundation Program objectives.

- p.12 Error: Rather than "new HSTEC," more correct to say revised or parallel forms.

Error: Instead of " . . . required to pass HSTEC," say "required to demonstrate mastery of the essential competencies."

- p.13 Question: Was grade 6 CBM canceled because of "problems similar to those that delayed the grade three test"?

- p.14 Clarification: First paragraph leads reader to assume that in-house test development is preferable or better than use of outside contractors. OIS is not in agreement with that assumption.

Error: The department is not "discussing the possibility," but has been planning and implementing the combination of achievement and competency testing since 1978.

- p.15 Error: HSTEC is not modified annually.

Questions: Is another form of CBM Grade 3 being developed and are corrections being made to the first form? Are new C-by-E being developed for administration in 1986-87?

- p.16 Clarification: What are in-service costs?

- p.17 Omission: OIS is not considered a user of the testing program in the entire report.

- p.22 Question: Is ". . . testing section is performing branch-level functions with the administrative authority of a relatively small line agency" true?

- p.25 Error: SAT referred to national reports is CEEB's SAT, not the SAT administered as part of the minimum testing program.

- p.26 Error: Student Information Services is a Branch, not an Office; it does not evaluate curricular strategies.

- p.27 "OIS has yet to find it necessary to change the schools' curriculum based on test results." This statement is far from the reality. Samples of OIS' use of test results include:

1. Annual statewide analysis for program improvement in Language Arts, Mathematics, and other related programs. Among the curriculum changes were:

Dr. Ichiro Fukumoto
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- a. Comprehension in Content Areas
 - b. Problem Solving in Mathematics
 - c. Instructional Strategies (CBM)
2. Longitudinal Student Achievement Monitoring for increasing school effectiveness.

CYHC:MSH:am

cc Dr. Selvin Chin-Chance